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UC Hastings College of the Law

Hastings Law News

The University of California Hastings College of the Law

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BATES

SUPREME COURT HOLDS LAWYERS MAY ADVERTISE

On June 27, the Supreme Court held that the prohibition against advertising by lawyers violates the First Amendment. The prohibition is contained in the American Bar Association's Code of Professional Responsibility and has been adopted in one form or another in all states.

At the same time the Court ruled that the Arizona Supreme Court's adoption of the advertising ban was state action that is immune from the Sherman Act.

The decision on the First Amendment question was five to four, with Justice Blackmun writing for himself and Justices Brennan, White, Marshall, and Stevens. Justice Powell dissented with an opinion in which he was joined by Justice Stewart, and Chief Justice Burger and Justice Rehnquist also dissented with separate opinions.

The Court was unanimous on the Sherman Act issue.

Bates v. State Bar of Arizona, U.S. , 54 L.Ed.2d , 97 S.Ct. 2691, 45 U.S.L.W. 4895 was foreshadowed by three decisions of the Supreme Court in 1975 and 1976, all arising in Virginia. In 1975 in *Goldfarb v. Virginia State Bar*, 421 U.S. 773, it held that the practice of law was "commerce" and that a county bar association's minimum fee schedule, enforceable under the state bar's disciplinary procedures, violated the Sherman Act. On the same day the Court decided *Bigelow v. Virginia*, 421 U.S. 809, holding that speech — in that case a newspaper advertisement for an abortion service in another state — does not lose its First Amendment protection merely because it appears in an advertisement. Then in 1976 in *Virginia State*

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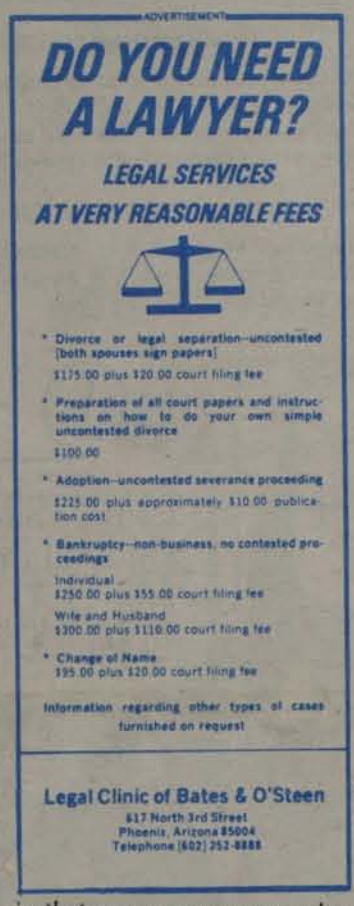
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Inside

FELLOWSHIP AT HASTINGS

A mother of two who helped co-found a day-care center for developmentally disabled children and a former cop on the beat who developed new procedures for juvenile drug abuse control have been selected as the 1977-78 recipients of the Tony Patino Fellowship at the University of California, Hastings College of the Law.

Cynthia Remmers of California and James M. Carroll of New Jersey were chosen as Fellows Elect from among six finalists who underwent a day-long selection process at Hastings on July 8. Selection Committee members included former United States Supreme Court Justice Arthur J. Goldberg (Chairman); California Supreme Court Justice Raymond Sullivan; Los Angeles Superior Court Judge Arthur Alarcon; Los Angeles attorney Rosemary Gauthier; Elliott Witt and Albert Dorskind of MCA, Inc. Others attending the selection procedure were Dennis Poulsen of the Friends of the Tony Patino Fellowship organization and David Abel of the Coro Foundation, who acted as Facilitator.

The Fellowship, which provides $5000 per year to cover both educational and living expenses, was established at Hastings through the formation of a half-million-dollar trust by Mrs. Francesca Turner in memory of her son, Antenor Patino, Jr. Prior to his death, Patino was a Hastings student and a writer for Universal Studios, a subsidiary of MCA, Inc.

Since it is Mrs. Turner's expressed belief that a proper legal education should sensitize the student to the needs of society, applicants for the Fellowship must have a record showing active participation in public interest activities, making some contribution to the solution of societal problems. It is hoped that the financial support provided by the Fellowship will enable each recipient to continue engaging in public service activities while pursuing his or her legal studies; the end result should be a lawyer sensitive to and active in the community.

Vice Dean William Riegger is Director of the Fellowship. Marvin J. Anderson, Dean of Hastings College of the Law, is Initiator of the program.

Editor's Note: The creation of this Fellowship is a step in the right direction. The background and process are detailed on a Special Insert at pages 8 and 9 of this issue.

COMM/ENT — BALA COPYRIGHT SYMPOSIUM

On Saturday and Sunday, September 17 and 18, Comm/Ent and Bay Area Lawyers for the Arts (BALA) will co-sponsor a conference on the Copyright Revision Act of 1976. The Act, which becomes effective January 1 of next year, is only the second comprehensive copyright law in this nation's history. The symposium will be the first of its kind concerning the new Act in the Bay Area.

Speakers will discuss specific provisions of the Act as well as its application to various affected industries. The symposium will conclude with a panel discussion on future developments and problem areas under the Act and in copyright law in general.

The distinguished faculty of government officials, practitioners, and law professors, headed by keynote speaker Lewis Flacks of the U.S. Copyright Office, will include Gordon Stulberg of Mitchell, Silverberg and Krupp, Los Angeles (a former president of 20th Century Fox Studios), Sol Schildhause of Farrow, Schildhause and Dent, Washington, D.C. (former head of the F.C.C. bureau on cable television), Jon A. Baumgarten, General Counsel of the Copyright Office, Washington, D.C., Robert Gordon of Gordon and McCabe, San Francisco, Paul Vapnek, Professor of Law at Hastings, and Marc Stein of Slaff, Mosk and Rudman, Los Angeles.

The cost of admission is $10 for law students, $100 for attorneys, and $90 for BALA panel attorneys. This fee includes a package of materials containing the Act, legislative histories, cases, articles, and notes prepared by the speakers. Enrollment is limited and pre-registration is suggested. Pre-registration can be accomplished by depositing the registration fee at the Comm/Ent office (55 Hyde St., #101), or by mailing it to BALA (25 Taylor St., San Francisco, CA, 94102).

HASTINGS LAW NEWS

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ANNOUNCEMENTS

COMM/ENT UPDATE

COMM/ENT, A Journal of Communication and Entertainment Law has been fully accredited by the faculty. The premiere issue will be distributed in early October and will feature both an article by Professor Roscoe Barrow and the reprint of a symposium whose participants included Daniel Schorr and Jesse Choper.

COMM/ENT has also acquired a new Editor-In-Chief. David Roth is the new E-I-C, he replaces the outgoing Harris Tulchin.

HILLEL EVENTS

The High Holy Days are fast approaching and holiday plans are being made by Hillel of Hastings. Services for all of the holidays will be conducted by Larry Moses at Congregation B'nai Emunah, 3595 Taravel at 46th Ave., San Francisco, on the following dates and times:

Erev Rosh Hashana	Mon. Sept. 12	8 p.m.
First Day Rosh Hashana	Tues. Sept. 13	10 a.m.
Second Day Rosh Hashana	Wed. Sept. 14	10 a.m.
Kol Nidre	Wed. Sept. 21	8 p.m.
Yom Kippur	Thurs. Sept. 22	10 p.m.
Break		2 p.m.
memorial closing		5 p.m.

Nina Mayer of the Committee to Re-Open the Rosenberg Case will be the featured speaker at the Hillel meeting Thurs. Sept. 8, 3:30 p.m. in room E. Ethel and Julius Rosenburg were sentenced to death for allegedly selling secrets regarding the atom bomb to the Soviets. The issues in the Rosenburg case involve the Freedom of Information Act and the validity of the death penalty.

In addition, transportation arrangements for the High Holy Day services will be made at the Sept. 8th meeting, so all students and faculty interested in attending the services are urged to come to this meeting. For additional information call 333-4922, or slip a note in locker 303.

MONEY . . . MONEY . . . MONEY
ASH BOOK EXCHANGE

All persons who sold books at the ASH book exchange should come to the A.S.H. office (55 Hyde) to pick up their checks. Checks will be available Thursday, Sept. 15 and Friday, Sept. 16 between 9:00 a.m. and 3:00 p.m. each day. Please pick up your check between those hours. Remember, ASH keeps 10% of your selling price as its fee and will refund 50% of your asking price if a book was lost.

ASH NOTICES

FIRST YEAR STUDENTS

All first year students planning to run for the position of first year representative to the Associated Students of Hastings (A.S.H.) governing council must submit written statements of candidacy to the A.S.H. office, 55 Hyde, by 4:00 p.m., September 9. Two representatives will be elected from each section. Elections will be held Wednesday and Thursday, September 21 and 22 in the Commons. Any candidate who missed the candidates informational meeting may address questions, in writing, to Peter Bertrand, locker 1212.

THIRD YEAR PRESIDENTIAL ELECTIONS

All third year students planning to run for the position of Third Year President must submit written statements of candidacy to the A.S.H. office, 55 Hyde, by 4:00 p.m., September 9. The election will be held Wednesday and Thursday, September 21 and 22 in the Commons.

RESOLUTIONS TO THE A.S.H. COUNCIL

All motions or resolutions to be considered by the A.S.H. Council must be submitted, in writing, to the A.S.H. Secretary's mail-box in the A.S.H. office by 1:00 p.m. on the Tuesday preceding the meeting at which the resolution is to be placed on the agenda.

A.S.H. COUNCIL MEETINGS

All meetings of the A.S.H. Council are announced on the A.S.H. Bulletin Board opposite room A. Meetings are held most Fridays at 11:40 in room 219. All Meetings Are Open.

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Tom Garvin.....**Editor**

Larry Falk.....**Managing Editor**

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Larry Fahn.....**[Alumni/Development] Associate Editor**
Jeff Kimmel.....**[Community News] Associate Editor**
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Michael DeAngelis.....**Contributing Editor**

What's Your Line Graphics.....**Typsetting**

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The **Hastings Law News** *as the Hastings student legal publication serving the entire legal community, serves as a platform for the expression of student opinion, a mechanism for enhanced communication between Hastings and the organized bar, and as a public forum for articles written by students, faculty, staff, and outside contributors. The 1976-77 volume was designated the Best Overall Law School Newspaper in California by the American Bar Association.*

We encourage publication of divergent viewpoints. All manuscripts or letters must be typed double spaced on white bond. The **Hastings Law News** *assumes no responsibility upon receipt of unsolicited manuscripts.*

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The opinions expressed are those of the author. All submitted manuscripts must be signed by the author. The views expressed are not necessarily those of the **Hastings Law News** *or of Hastings College of the Law. This is a student publication.*

PLACEMENT NOTES

On behalf of the Placement Office staff, it is a pleasure to greet the class of 1980 and welcome back the second and third year students. The Placement Office has a full program of activities and services planned for this year and we look forward to working with each of you.

If you have not already visited our new Placement Library, we invite you to stop by Room 260 GG at your convenience. We also encourage you to regularly check the Placement Office bulletin board across the hall from classroom A to be sure you have the latest information about placement programs.

I am happy to inform you that this year our staff has increased to include a full time counselor. Marie Eng has assumed responsibilities for this position. Performing Marie's former duties is Consuelo Yarbrough, who prior to joining the Placement staff worked in the Admissions Office.

ON-CAMPUS INTERVIEW PROGRAM

The on-campus interview program will begin on September 26, 1977. The August 22nd edition of the **Hastings Weekly** contained a listing of employers who will be conducting on-campus interviews during the three week period of September 26 through October 14, 1977. Students wishing to participate in the first round of on-campus interviews must complete an Interview Preference Form and return it to the Placement Office no later than 5:00 p.m. on Thursday, September 8, 1977.

If you have any questions regarding the on-campus interview program or should you desire any assistance in completing your resume, please come by the Placement Office.

INFORMATIONAL PROGRAMS

Throughout the semester, the Placement Office in conjunction with the Alumni Association will be conducting a variety of informational programs to assist you with your job recruitment and placement efforts.

The first two programs have been scheduled. I hope you will plan on attending.

Interviewing Techniques panel presentation to be held on Thursday, September 8th from 11:40 a.m. to 1:00 p.m. in Classroom B.

The Role of the Corporate Counsel panel presentation to be held on Tuesday, September 13th, from 12:40-1:30 p.m. in Classroom B.

FINANCIAL AID UPDATE

Students, who have never borrowed on the FISL Program before, should report to the Financial Aid Office immediately. Major banks participating in the program have established a deadline of September 8th for First Time Borrowers.

All students who have completed a Financial Aid Application and have not picked up their award letters, will have their awards cancelled four weeks after the first day of classes.

All Financial Aid checks unclaimed from the Student Trust Office will be cancelled four weeks after the date of notification.

Students who did not receive College Work-Study as a part of their initial award, may exchange their NDSL for Work-Study, providing they meet all other program criteria. Appointments for exchanging NDSL for Work-Study may be made by contacting the Financial Aid Office receptionist immediately.

If you have received a Work-Study allocation:

1. Your award letter indicates the amount of Work-Study you may earn for the academic year.

2. You will need to *request a Work-Study Referral Form* from the Financial Aid Office which indicates your award.

3. The *Referral must be signed & completed* by your supervisor at your Work-Study Agency, and returned by you to the Financial Aid Office to be reviewed and signed by a counselor. In addition, a check for 30% of your award must accompany the referral, unless your agency has a special arrangement with Hastings-they will advise you.

4. The Referral must then be hand carried by you to the Personnel Office where you will have to set up a Personnel Record in order to receive your monthly paycheck.

5. Time Sheets can be obtained from the Personnel Office. These should be completed monthly, signed by your supervisor and turned in to Personnel Office promptly. Your monthly paycheck will usually be available within 10 working days after the 1st of each month. They may be picked up at the Student Trust Office. *LATE TIME SHEETS WILL DELAY YOUR PAYCHECK.*

6. In the event you do not wish to use your *Work-Study Award* or leave a job before your Work-Study allocation has been used, you must notify the Financial Aid Office and complete a Termination Letter provided by the Financial Aid Office. Failure to do so could jeopardize any future Work-Study awards.

NDSL — If you are receiving an NDSL check, notification will be placed on the Financial Aid Bulletin Board when the check is available, usually 4-6 weeks after registration.

LEOP (Balance after Fee Deduction) If you are receiving a LEOP award, notification will be placed on the Financial Aid Bulletin Board when the check is available, usually 2-4 weeks after registration.

FISL — If you are receiving a FISL check, notification will be placed on the Financial Aid Bulleting Board when the check is available, usually 6-8 weeks after the Bank has approved your application.

All checks can be picked up at the Student Trust Office, Room 212 A. Checks can be held up as a result of incomplete applications, outstanding *Emergency Loans* and non-payment of fees.

N.B., If for any reason you receive an Ed. Fee Deferment, or a Reg. Grant *after* you have paid your fees, the Student Trust Office will arrange for a refund upon your request.

INTERVIEWING FORUM THURSDAY

On Thursday September 8th, the Alumni Association in conjunction with the Placement Office will sponsor an Interviewing Forum to be held from 11:40 to 1:00 p.m. in Classroom B. Topics to be addressed by the panelists will include the preparation of a resume and cover letter, pre-interview preparations, what to expect in an interview . . . what does the interviewer really want to know and following up the interview.

This program, now in its second year, was developed by the San Francisco Alumni Placement Committee under the chairmanship of Paul Alvarado '64. Last year's program was well attended attracting approximately 150 students. The forum was originally planned with second and third year students in mind, although first year students would also find it valuable. I hope you will attend.

Maureen Johnson
Director of Law Placement

LEXIS LIVES

The LEXIS terminal in the library is now available for use. LEXIS is a full-text computerized legal research system, whereby a person, sitting at a typewriter keyboard, can access an extensive collection of federal case law, statutes, and agency rulings, and case law from a dozen states, including California.

Before using the actual LEXIS terminal a student must have some preliminary training. This involves reading the primer (kept at the Loan Desk), using the simulator (for which a sign-up sheet is posted on the door to the terminal), and viewing two videotapes (set up in videotape library, 305 Golden Gate).

There is also a part-time assistant who will be at the machine in the mornings from 8:15 to 10:30 to give instruction and help. To make the best use of the assistant's time and knowledge, the user should have a definite question to research, rather than simply stopping by and saying "How does this work?"

One may sign up for an hour's use of LEXIS on the sheet posted on the door. When the machine is not in use, or when the reservation holder does not show within 10 minutes after the appointed time, LEXIS will be available on a first-come, first-serve basis.

Until further notice, LEXIS will be limited to third year students and faculty. By contractual arrangement with Mead Data Corporation, Hastings is not allowed to use LEXIS for fee-paying clients. In other words, if a student is clerking for a firm, it would violate the contract for him-/her to use LEXIS to do research for the firm.

Martha Blum

SPECIAL ALUMNI — STUDENT PROGRAMS

One of the main thrusts of the Alumni Program is student relations. Over the course of the past several years the Alumni Association has developed a series of panel presentations which bring attorneys to the College to discuss the practical aspects of the practice of the law. Two of these programs will be presented during the month of September.

On Thursday, September 8, at 1:30, the Placement Office and Alumni Association are co-sponsoring an Interviewing Forum, which will feature a panel of alumni from varied backgrounds who will discuss interviewing techniques (See accompanying article by Placement Director Maureen Johnson.)

The following Thursday, September 15, the sixth annual Private Practice Forum has been tentatively scheduled. This program features attorneys in private practice in different areas of the state who discuss large firm/small firm differences, employer/employee relationships, setting up your own practice, and geographic factors such as job availability and specialities of practice particular to a geographic region. Watch the **Weekly** and bulletin boards for further details.

Other panel programs will be presented throughout the year and will be publicized in the **Law News** and **Weekly.**

Students are also encouraged to watch for announcements of regional chapter events. Students are always welcome and its is a great way to make these important contacts.

STATUS OF WOMEN?

The Legislative Committee of the San Francisco Commission on the Status of Women is recruiting new members and will hold its organizational meeting on September 15th, 1977, at 4:00 p.m. at the COSW's offices, 50 Fell Street. Subsequent meetings will be held at 4 p.m. on the first and third Thursdays of each month.

The role of the Committee is to analyze federal, state and local legislation involving issues of sex discrimination. Based on reports by the Committee, the Commission then takes a public position on particular bills and conducts letter writing and related lobbying efforts regarding such bills.

Over the past 10 months, the Committee and the Commission have supported legislation equalizing pensions for widows & widowers, legislation benefitting domestic violence victims, a bill which would remove the liquor license of any private club that practiced race and/or sex discrimination, a bill expanding the eligibility of prison inmates for county work furlough, bills revising the evidence law in rape cases and bills relating to sexual orienta-

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IMPRESSIONS COUNT

Something good is coming to Hastings this fall . . . a tailor with knowledge and good sense about professional clothing. A tailor who can help make the unavoidable expense in "work clothes" a sensible investment and an enjoyable experience.

Perhaps surprisingly, it is possible to go through undergraduate years, (a few years in the world even), and some time in law school without ever wearing, much less purchasing a suit. But sooner or later for most of us at Hastings, a day comes for a job interview or a part time clerking position begins requiring attire dramatically distinguishable from classroom wear.

We introduced our tailor last year and many students bought shirts and suits from him. Our best recommendations and proof of satisfaction guaranteed will come from them. Ask around. There's a special delight awaiting men and women who may never have had the glee of cutting out a magazine picture of a suit that impresses them or perhaps designing their own clothing with a tailor: "I like slant pockets, extra long sleeves, form fitting waist, subtle or fancy linings, secret pockets, etc."

Whatever the personal preferences or body types may be, there's a very personal satisfaction in wearing really fitted, quality clothing the way you like it from your own tailor. Concerned about price? Probably. Then shop around a bit before meeting our tailor, you will be pleasantly surprised. Is $12.50 too much to pay for custom-made monogrammed dress shirts? Top quality European fabrics plus much detailed hand tailoring in Hong Kong make a bargain to be proud of.

For those who have been buying at the best shops over the years, here's a chance to save $ and at the same time get precisely what you're looking for without endless hours of searching from store to store. You can select any style you want, in fabrics from denim to cashmere mink.

For the hard to fit, a single purchase from our tailor will convince you of the time, money, and convenience value of this service to the Hastings community, sponsored by the East Asian Law Society. Check bulletin boards for the dates the tailor will be here in San Francisco.

by Bernard Wilson

P.D.P. PARTY AND ACTIVITIES

The International Fraternity of Phi Delta Phi quietly made its fall debut with a sublime yet smashing imbibing party at John Barleycorn's. Sad to say, we were ill-equipped to commence serious propaganda any earlier due to the absence of our esteemed Magister, Nelson Barry, who was held captive at the Phi Delta Phi National Conference in the south of Florida (Fort Lauderdale — he suffered).

At last, however, the executive cadre has returned, and activities shall commence in earnest. In addition to some fantastic parties during the year, we customarily entertain at John Barleycorn's, a cozy establishment at Hyde and Larkin Streets, on alternate Fridays, the next debauch being September 9. A largely social organization, we are often joined at Barleycorn's and at our P.D.P. breakfasts and occasional luncheons by the various faculty-persons we are honored to have as members, among them Professors Green, Henson, Lind, Riesenfeld, Whelan, and Sullivan. Speaker forums, bake sales, and excursions to baseball games complete our repertoire.

Phi Delta Phi is the oldest legal fraternity in the country, with member Inns at all major law schools in the United States, as well as Canada and Puerto Rico. Despite its mundane (and sexist) appellation, women members are heartily welcome — they (humbly) comprise some of our most meritorious members. International dues, for lifetime membership, are $30; local dues at Hastings come to $10 per semester. The only substantive requirement is good academic standing (broadly defined) at the time of initiation — presently scheduled for the end of September. Apart from the marvelous opportunities for free play, the International Fraternity offers its members various benefits, including scholarships, student loans, insurance programs, "The Brief," our newsletter, and the chance to write dull articles that people can peruse at their leisure with such obvious delight.

NEVERTHELESS, if you are at all intrigued by the prospect of joining our bizarre bunch, presently numbering around fifty, please join us at Barleycorn's on Friday, September 9th, at the cocktail hours (4 to 6), for Micheloeb at 25 cents a glass (mostly) free pizza from the nearby Front Room Pizza Works. See you there!

As always, Shelly Kramer, Vice-Magister

P.A.D. UPDATE

Over 125 pitchers of beer and innumerable baskets of popcorn were consumed by prospective members of Phi Alpha Delta Legal fraternity at Herrington's after the Information Fair on Tuesday, Aug. 16, 1977. To continue this tradition of friendship and good times, P.A.D. invites all members and prospective members to a day of fun and games and a Bar-B-Q picnic on Saturday, Sept. 10th from 9am to 3pm at the Country Estate of Frank Worthington, "Rancho Escondido", Kenwood Sonoma County. There will be swimming, volleyball, football, softball, croquet, and plenty to eat and drink (which, of course, means a few kegs!) Directions will be provided and carpools will be arranged so stop by the P.A.D. table in McAllister Lobby between 11am and 1pm. All who wish to attend MUST R.S.V.P. by 5pm Wednesday, Sept. 7, at the P.A.D. table, or to locker numbers 1360, 303, typing 9, or call Steve Fluharty at 776-8522.

An initiation of new members into Jackson Temple Chapter of Phi Alpha Delta is scheduled for early October, and a tour of San Quentin prison is planned for soon thereafter. We can accomodate only 50 people on the tour, however, so it will be restricted to members on a first-come-first-served basis. More information on the tour will be forthcoming.

The P.A.D. Efficiency Reading class conducted by Debbi Klipstein will be offered soon. Sign up sheets for the course are at the P.A.D. table in McAllister Lobby.

by Valerie Foster

STATUS OF WOMEN?

Continued from page 3

tion discrimination in employment and prohibiting sexual harassment of employees. We have opposed bills that would limit the access of women to abortions and a bill that would have authorized the construction of a new womens prison.

Major unfinished business includes study of 6-8 bills affecting the State Fair Employment Practices Commission, preparation of testimony and organization of support for a September 28th hearing (in SF) on AB 1645. AB 1645 would make the current minimum jail standards mandatory and would require equalization of jail programs for male and female prisoners. We have approximately 20 other 1977 bills that have not yet been analyzed and are pending in the 1977 California Legislative session, and we anticipate receiving additional bills for study in 1978. Our areas of activity may be further broadened by input received at a series of community hearings to be held by the COSW in 1977 and 1978.

A crucial factor in the Committee's being able to continue its work is maintenence of an active group of law student members. While all Committee members are unpaid volunteers, those of us who have worked with the Committee this year feel that it gives its members a chance to learn about legislative research, the legislative process and to become involved in the only city agency charged with eradicating sex discrimination.

If you would like to join our group or find out more about our work, you should contact one of the Committee's Chairpersons. They are: Tony Rothschild (a San Francisco attorney & member of the Commission, phone # 668-6300) and Mary Vail (the Director of the Womens Resource Center of the SF Jails & an instructor at Hastings, phone # 495-0446 or 752-1770).

LAW SCHOOL ENROLLMENT STEADIES; WOMEN INCREASE

Total enrollment in the 164 law schools approved by the American Bar Association steadied to a gain of less than 1 per cent during the academic year of 1976-77, according to figures published by the American Bar Association Section of Legal Education and Admissions to the Bar in the 1976 **Review of Legal Education.**

During the last school year there were 117,451 students in the approved schools, as against 116,991 the previous year. Confirming the leveling off is the fact that there were fewer law school admission test administrations for the test year ending in 1976 than in either 1974 or 1975.

The number of women law students continued to rise, as it has steadily in recent years. Women students increased from 26,737 to 29,982, up 12.1 per cent, enabling women to account for 25.5 per cent of the entire student body in the approved schools.

The number of J.D. and LL.B. degrees awarded rose 8.7 per cent, presaging another increase for 1976, when the figures are known, of admissions to the bar.

LEGAL EDUCATION AND BAR ADMISSION STATISTICS 1963–1976

Year	Total	Enrollment Women	First Year	L.S.A.T. Administrations	J.D. or LL. B. Awarded	Admissions to the Bar
1963	49,552	1,883	20,776	30,528	9,638	10,788
1964	54,265	2,183	22,753	37,598	10,491	12,023
1965	59,744	2,537	24,167	39,406	11,507	13,109
1966	62,556	2,678	24,077	44,905	13,115	14,644
1967	64,406	2,906	24,267	47,110	14,738	16,007
1968	62,779	3,704	23,652	49,756	16,077	17,764
1969	68,386	4,715	29,128	59,050	16,733	19,123
1970	82,499	7,031	34,713	74,092	17,183	17,922
1971	94,468	8,914	36,171	107,479	17,006	20,485
1972	101,707	12,173	35,131	119,694	22,342	25,086
1973	106,102	16,760	37,018	121,262	27,756	30,879
1974	110,713	21,788	38,074	135,397	28,729	30,707
1975	116,991	26,737	39,038	133,546	29,961	34,144
1976	117,451	29,982	39,996	133,320	32,597	——*

NOTES: Enrollment is that in American Bar Association approved schools as of October 1. The L.S.A.T. candidate volume is given for the test year ending in the year stated. Thus, 133,320 administrations of the L.S.A.T. occurred in the test year July, 1975, through April, 1976. J.D. or LL. B. degrees are those awarded by approved schools for the academic year ending in the year stated. Thus, 32,597 degrees were awarded in the year beginning with the fall, 1975, term and ending with the summer, 1976, term. Total new admissions to the bar are for the 1975 calendar year and include those admitted by office study, diploma privilege, and examination and study at an unapproved law school. The great bulk of those admitted were graduated from approved schools.

* 1976 admissions to the bar not yet available.

FREE PRESS . . . FAIR TRIAL

In the *Nebraska Press Association* case, Chief Justice Burger noted that the Standards "are, in practice, subject to powerful strains." (427 U.S. 539, at 550). I submit that the strains are so potent that as to the Free Press part, lawyers ought to abandon any attempt at standards, voluntary or otherwise. In this, I agree with the press that lawyers and judges cannot be editors. Yet editors can set standards for themselves.

Indeed, the Chief Justice compared the media's present elevated status as being in the nature of a public trust. It is not asking too much, he wrote in *Nebraska* (427 U.S. at 560), for the media to "direct some efforts to protect the right of the accused to a fair trial."

The simple Constitutional issue is whether in criminal trials the prosecution is to prove its case in the courtroom subject to juridical evidence, or, whether outside influences are to reduce the government's burden. Reducing that burden will advesely affect us all.

Certainly, if history is the guideline, the press will zealously protect the Constitutional standards in every case as its enlightened leaders have generally done in the past.

The landmark cases in the struggle to establish a free press sprung from criminal libel trials — in England, the trials of John Lilburne and the trial of the Seven Bishops; in America, the famous trial of the printer John P. Zenger in New York. All were a singular influence in uniting liberty-loving people. In fact, it was Zenger's great counsel, Andrew Hamilton, who told the jurors, "In your justice lies our safety." (Not, in our justice, lies your safety). And in all these cases that went to the jury they acquitted the press defendant.

Nothing in the history or the words of the First Amendments suggests that the press be a law unto itself. The Founding Fathers were acutely aware of the books of men like Lilburne, Locke and Milton. They were indebted to Tom Paine's pamphlets which popularized the revolutionary ideals. These were writings of dissent and change. This is what the First Amendment was to protect.

Of course it was important to abolish prior restraints. But clearly, the greater concern was the criminal trial of seditious libel and treason. England had accepted that the government should provide its indictments by strict standards. But when the juries went awry, there was often pressure *d'hors* the record. Something was needed. Not only to protect the innocent, but to eliminate the ease by which the party in power could legally stifle the opposition with a criminal indictment.

The unique contribution of the Constitution was the establishment of an independent judiciary and the impartial jury. Thus, judges not subject to the King's whim and a jury even further removed from the Crown's grasp became the barriers to protect those advocating change and criticism.

It hasn't always worked.

If I can skip a century here — to 1886 and to a labor rally in Chicago. To a rally that was full of long, dull speeches and peaceful almost to the very end when two cordons of police appeared. Suddenly a bomb exploded killing a policeman. Gunfire broke out. Five more police were killed and countless civilians injured.

History calls this the Haymarket Riot. Forgotten is that half of the eight who were soon indicted were editors and writers seized in an illegal police raid in their editorial office. The presses were stopped.

What was the reaction of the Chicago press? "The deaths," the Tribune said the next morning, "were brought about by a galaxy of blood-preaching anarchists." From then on, "anarchy", "blood," "labor conspiracy", "mad hyenas", dominated front page headlines. And each of the jurors would say he had heard or read of the case and most had an opinion about the "guilt" of the defendants. Not surprisingly, the jury convicted and the defendants were sentenced to death. It is true they were not members of the established press. They represented two minority papers, one published in German (Arbieter Zeitung). They advocated a very radical idea — the eight hour day!

Experience demonstrates that it is often (but not always) the small presses that have the most difficulties with the authorities. Add to that the individual reported suddenly confronted with the law who finds himself alone. Surely retribution has its greatest effect on the vulnerable and weak. *Continued on page 12*

THE PRICE OF PAIN

A mother's life in hard cash is worth about ten times more compensation in an American court than in a British one.

The eye of an American is 20 times more expensive than that of a Briton. Just one day of pain can cost a quarter of a million dollars in the United States while an entire week of pain in Britain usually merits $340 compensation.

These were the contrasts discovered by a symposium of American and British trial lawyers and doctors who compared the compensation systems of the two countries here. They discovered that:

• The accidental or negligent death of an ordinary mother of three can result in a court award of between $100,000 and $150,000 in the United States. In Britain it amounts to between $8000 and $17,000.

• The loss of an eye is compensated by a standard $10,250 court award in Britain but in the United States it can fetch between $150,000 and $250,000 (in one case $600,000).

• A quarter of a million dollars has been paid in the United States for one day of pain suffered by a patient injured through negligence, while in Britain the maximum award for a week of pain in such cases is $340.

Donald Teare, who heads one of the two malpractice protection plans for British doctors, showed slides of one recent case where a pair of forceps was recovered from the abdomen of a man 17 years after they had been left there.

"He fell on New Years Eve and the forceps moved. We discovered them by X-ray. He was paid 1000 sterling ($1700) and the forceps were removed," he said.

NON-MARRIAGE MARRIAGE CONTRACTS

CHICAGO — "Marriage contracts" between non-married couples are catching on — and they are beginning to be recognized and enforced by the courts.

Whether the end result of this trend will in fact be marriage by another name remains to be seen, but experts appearing at an American Bar Association annual meeting panel on "Sex and Serendipity from Coast to Coast" agreed that non-marriage contracts are here to stay.

The partners in such relationships were drafting binding "anti-nuptial contracts" before lawyers were, harking back to early 19th century England and the wives' auction block, when marriage was viewed as an economic transaction, said panelists. But now lawyers are asking and gaining enforcement of such unwritten contracts, even for homosexuals.

Lee Marvin's severing of relations with Michelle Marvin, who changed her name but not her marital status, is among the most famous of cases where a right to prove an oral partnership has been recognized. But the genesis of the theory dates back to 1938, said Dr. Doris Freed, a New York City lawyer.

San Francisco legal journalist Stephen Adams said Marvin's case generated new legal theories when the California Supreme court ruled in late 1976 that dependent females could claim property rights under oral agreements, as long as their contractual obligations were not purely sexual.

The court decided this non-traditional life style could be recognized under "straight common law traditional doctrines" of contracts, explained Prof. Carol S. Bruch of the University of California School of Law.

Michelle Marvin will present her proof this fall, and it is likely to provide more fodder for spurned partners, even those with "pillow talk" agreements, Adams said.

And the theory can be extended to other social arrangements, such as groups of elderly persons "living together" with clearly described contractual responsibilities for each other, speculated Riane Eisler, a Los Angeles attorney.

Several panelists noted a growing interest in legislation recognizing rights of the non-marital spouse, based on such implied contractual services as homemaking chores.

IN BRIEF...

The House of Representatives has voted to prohibit the U.S. Legal Services Corporation from participating in gay/homosexual civil rights litigation. An amendment offered by Rep. Larry McDonald (D-Ga.), passed by a vote of 230 to 133.

Texas Supreme Court Judge Donald B. Yarbrough, facing forced removal from office because of allegations of forgery and solicitation for murder, resigned last month. Supreme Court Judge Yarbrough said he could no longer fight to clear his name because the battle would be too costly. "This fight has resulted in a complete collapse of my life's savings . . . I can no longer pay the minimum expenses necessary to defend myself," said the former judge.

A Superior Court judge in Santa Cruz has sentenced a doctor convicted of numerous Medi-Cal fraud violations to a year term as a middle class physician. The convicted physician will provide rural medical care in Southern California and will receive a $30,000 annual salary. No imprisonment was requested in the unusual proceeding. When asked about the propriety of sentencing a convicted physician to a $30,000 job, the judge said, "you have to pay him something."

The Supreme Court ruled this summer that the First Amendment does not support inmate claims of a right to solicit union membership. In so holding, the Court said that the prison environment is not a "public forum." The decision according to Justice Thurgood Marshall in his dissent, was an "aberration" and "a giant step backwards towards that discredited conception" of prisoners as "slaves of the state."

The proposition/initiative access route to governmental power will be expanded under a constitutional amendment proposed by Senator James Abourezk (D-S. Dak.). The amendment if adopted, would give citizens the right to enact proposals that have been ignored by elected officials.

The California Supreme Court has refused to recognize a cause of action by a child for loss of parental consortium. The plantiff argued that since a child may recover under California's wrongful death act for loss of affection and society, it was a denial of equal protection not to allow recovery via a consortium action. The court rejected this argument. (563 P.2d 858).

In a related case, the California Supreme Court held that a fetus is not a "person" within the meaning of the wrongful death act until there has been a live birth. The issue arose in a medical malpractice action by the parent against the delivering physician. (no. 30574, 6/8/77).

A Federal District Court Judge in Maryland has held that student organizations have a constitutional right to engage in litigation. The court held that absent a showing by university officials of a legitimate substantial valid interest in regulating or restricting such litigation, a ban on litigation is invalid. (430 F. Supp. 387).

IN FLIGHT

Well you gassed her up
Behind the wheel
With your arms around your sweet one
in your Oldsmobile
Barreling down the boulevard
Looking for the heart of Saturday nite.
© Tom Waits

"GAMBLING LOSSES"

By Tuesday, Raleigh was cozily aware that he was in demand. Glittering invitations to well-heeled parties, a float on the bay, suggestive smiles from desirable dates—it all spelled out WEEKEND in bold shiny letters.

When Saturday arrived, he was faced with that most pleasurable of dilemmas—should he accept the invitation of the Blonde or Still Blonder? He skipped the section's softball game on pretense of study pressures, but gossiped on the phone instead. This research inconclusive, Raleigh resorted to the Las Vegas amateur gamble. In disregard of the odds, he heeded his throbbing instincts and chose to go with the Blonde.

Standing before his mirrored image, Raleigh puzzles over last minute preparation (whether to blow dry or be blown dry). He glanced out the window and pondered the deep blue sensuality of the East Bay's expansive lap. A cruise around the bay—don't show up fashionably late for this party, she'd quipped. Needn't worry, he thought. He'd be there early, to gaze in awe as she delicately tilted her soft oval features.

Nevertheless, habit (had he ever been anywhere on time?) forced him to scramble downhill from Jackson to Beach in seven minutes. All for naught, he grimaced, as he waited impatiently for the tardy boat's departure. Worse still, the Blonde showed up alright, but with what appeared to be one, maybe two other dates also in tow. Winds from the water, hospitable only moments before, now caused the sweat from his haste to dry crustily across his sticky cheeks and eyebrows. As the boat slopped out of its docking, Raleigh shivered at the bow, cursing silently.

Then you comb your hair
Shave your face
Tryin to wipe out every trace
Of all the other days
In the week
This'll be the Saturday
You're reachin your peak

Sometimes down but never out, Raleigh rebounded. Knowing he'd further his cultivated image (she called him mellow—what could be more complimentary to an aspiring Northern Californian?), he resolved to salvage the night with booze and a good buzz. He discovered another easily-aggrieved partner underneath a drooping Panama and plunked down beside him.

Though they drank for sustenance, the liquor failed them. His drinking companion's head soon surrendered to the weight of the hat and fell emptily upon his fleshy pink neck. Raleigh's brain rolled inwardly, clashing with the lurching of the cruiser. He tottered out to join the living on the deck.

He'd erred in choosing the Blonde over Still Blonder; now he just plain goofed in trying to make the invitation jive with his expectations. Through drunken, diminished vision, he stalked the Blonde then cornered her. The blurted out—

"Come on, let's go make it on the deck." Silence. She looked startled, though amused.

"Come on, that's what these bay cruises are for."

He mouthed these words painfully, for although his charm was at low ebb, his ego felt the damage it was heaping upon itself. Blondie ran away and Raleigh hunched over the rail, feeling as though he were floundering in the bay rather than cruising upon it.

Things got no better. The booze ran out; the ship never left the bay, turning around unsatisfactorily each time it reached the Golden Gate. The irrevocability of his decision to board the boat did not escape him as he mused whether the captain might stop by shore, ever so briefly, so he could rush to Still Blonder. Yet the ship still circled dizzily, its railing, like prison bars, penning him in. He was a captive till midnight.

Alone on the deck, Raleigh fell prey to his masochistic potential. Like someone who continues to bang their head against the wall because they'd miss the pain if they stopped, he decided to follow the Blonde to the Buena Vista. Having docked at the Wharf, he was free to go, to leave the pain of a wasted Saturday night. But he could not.

He elbowed his way into the steamy tourist-trap, more like a giggly tomb, he thought, littered with those who've been wasted by sight-seeing, yet somehow continue to chuckle vacantly with, oh where are you from, Kansas City did you say? Unable to avoid them, for this is their bar, he plunged through white cashmere with pearls, golden belt-buckles adorning purple double-knits, and gabby lips foaming with Irish coffee. He affected patience, sitting cat-like until he saw his opportunity and pounced. Suddenly, he was again in Her presence.

He prayed for a kind word, something that might heal his gaping wounds. Instead they were scrubbed raw.

"If I were you, I wouldn't try anything because that guy by the bar is my old boyfriend, and he's bigger than you."

Bingo! He was released, freed from the Buena Vista. Self-torture he could withstand, but he was not to be punished by insensitive women. And no, thank you, he did not need a ride home. Hyde Street, from the Wharf to the Nob, was just made for a leisurely walk. You could tell by the stairs built into it.

He stumbled up Hyde with the difficulty of the losing gambler leaving Vegas. Those masses of unfortunates finally drive into the desert, tearing themselves away from the casinos holding the fortune that was theirs, as well as the fortune that should have been. From miles away they can see Vegas glaring like a single dingy lightbulb screwed into a filthy floor. With those other losers, Raleigh shared the inescapable realization—he shouldn't have bet so high, on so little.

Its found you stumblin
Stumblin on the heart of Saturday nite.

by Peter M. Nelson

DATELINE: RTF

After Return to Forever's excellent release of *Romantic Warrior* last year, it looked as though the group was finally going to branch out and make themselves known to the entire music world. However, the group's leader and keyboard genius, Chick Corea, cut two musicians from the group, percussionist Larry White and guitarist Al DiMeola. They were fired because Corea wanted to form new musical directions, and in doing so, radically changed RTF. He kept co-founder and bassist supreme Stanley Clarke, installed Gerry Brown (of Clarke's solo group) as drummer, added his long-time friend and companion Gayle Moran to sing as well as perform on the keyboards and piano. Joe Farrell, a well-established and polished jazz musician who appeared on the group's earliest efforts (*Return to Forever* and *Light as a Feather*), operates the saxophone and clarinet. Stanley Clarke's horn section is employed in the same position.

Berkeley Community Theater was the scene for the group's promotional tour for their latest recording, *Musicmagic*. The entire two and a half hour show consisted entirely from this latest production and was most entertaining. Though the group is not as strong as the '76 version, they presented the latest RTF material with firm musicianship. Corea has contrasted the material from *Romantic Warrior's* jazz-rock sounds to more jazz-based compositions. Most of the material on *Musicmagic* contains the brilliance of Corea and Clarke's ability to write, except for Moran's two compositions.

Moran is used in the same light as Flora Purim was on the earlier RTF albums; only she plays the keyboards along with her singing duties. She is an unnecessary addition to the group and has a small but damaging effect on them. Her keyboards are not needed for her ability is limited, and there is no need for another keyboard since Corea is present. Her voice, which is supposed to be her biggest asset, is highly overrated.

Gerry Brown displayed his talents on the drum kit well. His rythms erected an excellent foreground for the group to build on, and his timing was synchronized well with the rest of the group. The horn section, featured James Tinsley on trumpet, trombone and saxophone, enabled the group to expand their musical horizons. Corea fascinated the crowd with his usual incredible runs on the synthesizer and mini-moog, as well as some tasty work on the piano.

His writing on *Musicmagic* is not as imaginative in comparison to previous material, but Clark's accompaniment beefs up most of the songs to solve this problem. It was Clarke who stole the show from his fellow musicians by displaying his superior talents on the electric and upright acoustic bass, his intense bass solos discarded any need for a guitarist, as the highlight of the show was a solo jam between Corea, Clarke and Farrell, where all three showed what their talents had to offer. Farrell, who has returned with the group after an absence of four years, is a welcome addition.

The new Return to Forever has an excellent chance to pick up where the old crew left off in establishing themselves to the entire music arena, rather than just jazz. If Corea drops Moran from the group, and replaced her with a vocalist with ability, which is highly unlikely, the group would have no obstacles hindering them from achieving their goal. Without Moran the groups stands solid, with enough ability and potential to make an enormous contribution to the music world, even more than Corea and Clarke have already made.

"MUSIC IN YOUR EARS"

Too much of a critic's time is spent analyzing faults in the mass of records that are released every month. This summer produced a number of excellent including many by lesser-known artists. With that in mind, here is a capsule view of the musical summer.

AL JARREAU—LOOK TO THE RAINBOW. In his third recording Jarreau finally gets a chance to work out on vocals in a more relaxed setting. The album, recorded live in Europe, gives Jarreau room to improvise and use his array of vocal talents. He can sound like a conga drum, a violin, a bass, a gospel singer or a scat artist with amazing ease and style. His performance this summer at the Great American Music Hall was an example of what true stage presence is. Much of this energy translates into the recording format creating an album which is alive and entertaining.

PETER TOSH—EQUAL RIGHTS. Equal Rights is a highly successful follow-up to ex-Wailer Tosh's first album Legalilze It. A supercharged mixture of ganga, Jamaican politics, and Rastafarianism propels Tosh to what is the reggae album of the year so far. Much cleaner and accessible than Bob Marley's Exodous, Tosh may provide the challenge that will remove Marley as reggae's leading proponent.

JAMES TAYLOR—JT. In his first effort for a new label, Columbia, James Taylor proves that he is not a musical name of the past. The album shows an ability to both pick up present trends in music and retain the folk singer image that Taylor has always had. Both in production and vocals, Taylor has put together his best album in recent years, fully worthy of the sales it has generated.

STEVE WINWOOD—WINWOOD. While on the subject of names from the musical past, Steve Winwood has long been known as the backbone of the group "Traffic." Now he has produced his first solo effort along with assistance from long time associate Jim Capaldi and other friends. The album proves what most people thought, it was the multi-talented Winwood on vocals, guitar, and keyboards that made Traffic what it was. A thoroughly satisfying blend of intelligent rock with elements of jazz and disco.

OSAMU KITAJIMA—OSAMU. What happens when the koto meets the electric guitar? One of Japan's most popular musicians of the 1960's has now produced a surprisingly different album which combines elements of eastern music and western jazz. An interesting album for those with more explorative tastes.

KEITH JARRETT—STAIRCASE. If there is any question left that Jarrett is one of the musical geniuses of our time this album should help put them to rest. As shown in his recent solo performance in Berkeley Jarrett is the leading improvisational pianist performing today. He has moved far beyond jazz into classical structures to produce music that is soothing yet never boring. Any person with a love of solo piano should get this album.

GARLAND JEFFRYS—GHOST WRITER. What is Brooklyn reggae? Jeffrys combines a lot of elements in his music, the vocals are reminiscent of Mick Jagger, the music deep in the rock of New York yet adorned with a reggae backbeat. If for nothing else but the song "Wild In the Streets" this album should be heard.

EARL KLUGH—FINGER PAINTINGS. It is hard to get an understanding of where Earl Klugh is headed musically. After playing with George Benson for many years Klugh has produced three highly successful albums featuring his acoustic guitar and a slick LA jazz sound. When playing his own compositions Klugh is very impressive, yet on songs like the "Theme From M.A.S.H." he borders closely on muzak. Still a very pleasant record.

BILL EVANS—QUINTESSENCE. For the moment when you want to hear a quiet jazz album that will not challenge your sanity this may be it. Pianist Evans, joined by Guitarist Kenny Burrell and other notables, provides an effort that is quiet but played with the taste and style that is only acquired after decades in the business.

GREG KIHN—GREG KIHN AGAIN. An album of infectious and thoroughly unpretentious rock and roll from our own Bay Area label, Beserkley. Although no one distinguishes themselves musically, Kihn has a pleasant voice and provides music to make you dance, not think.

by Jules Kragen

PAUL HORN RETURNS

Master musician, Paul Horn will make a long-awaited appearance with Tai Chi Master, Al Huang at the Marin Civic "Veteran's Memorial" Auditorium on Sunday, September 11, 8:00 P.M., with ticket prices $5.50 and $6.50 reserved seating.

Paul Horn realized his love of music at an early age and after receiving a bachelor's and Master's degree became a "session" musician recording with Chico Hamilton, Miles Davis, Duke Ellington, Nat King Cole, Ravi Shankar, Frank Sinatra and Tony Bennett. In 1960, he started his own band and still had time to join the NBC staff orchestra while doing studio work. After living in Los Angeles for years, he moved to Canada, where he presently resides, and plunged into new projects which including film scoring, soloing with the Victoria Symphony Orchestra, for which he received two grammy awards on his performance of "Jazz Suite on Mass Texts." After recording some dozen and a half albums, his big debut on Epic records came with his LP, INSIDE THE TAJ MAHAL, followed by his second Epic release, INSIDE II. This was part of an experiment Paul undertook with killer whales. Coinciding with this album, Paul completed a film for Columbia Pictures, WE CALL THEM KILLERS, emphasizing his communication with the whales.

To date Paul Horn has completed an 18 week series of half-hour TV shows for Canada's CTV Network, toured and conducted musical workshops internationally. He is widely respected in jazz circles and has been honored of late by *Who's Who is America, Man of Achievement* and *The Blue Book of England*. He has also been a winner of jazz polls conducted by *Down Beat* and *Playboy* magazines. Paul Horn has said, "There is no more jazz-rock, only music. My music is sound meant for everyone's ears."

The visual part of the concert will be Al Huang, a Tai Chi Master, who grew up in China with training in the Classics and a variety of Oriental fine and martial arts. He later came to America to become an architect and a concert performer. He has taught theatre/dance and Asian arts throughout North America and the Far East and is director of the Lan T'ing Institute in Sausalito. Al Huang has published a number of books, one which he co-authored with Alan Watts. What you hear from Paul Horn's flute will be gracefully seen as this master of Tai Chi exquisitely moves across the stage.

Also to be seen is a multi-media presentation backing up Paul Horn's performance along with a candid discussion of his career as a jazz musician and his experiences in the Taj Mahal, performing with the whales and his latest episode in the Great Pyramid of Cheops. The entire event is non-profit.

The S.F. *Chronicle* named Paul Horn's 1976 concert in San Francisco as "the best concert . . . 1976," and this one promises to surpass its predecessor. "SOUNDING SIGHT"—one you'll have to see with your ears.

by Moorti Newmark

AMERICA 1976

An exhibition of more than 75 monumental paintings of America by 45 of the country's leading realists who were commissioned by the U.S. Department of the Interior to paint whatever they wanted in the lands the Department manages will be featured at the San Francisco Museum of Modern Art from September 16 through November 6.

"America 1976" marks the first U.S. Government art subsidization of this scale since the Farm Service Administration's photo documentation and the WPA's helping hand to artists in this project resulted in paintings of scale and panoramic inclusion that humble many of the country's early landscape paintings in comparison.

The exhibition opened with much celebration at the Corcoran Gallery of Art in Washington, D.C. in April of the Bicentennial year. It then went to Boston where the voluminous paintings had to be divided between Harvard's Fogg Museum and the Institute of Contemporary Art. Since shown in Minneapolis, Milwaukee, and Fort Worth, it will travel to Atlanta after San Francisco and close in Brooklyn.

Each of the artists were given $2000 and living expenses to paint anything they wanted so long as it pertained to the work and programs of one or more of the Department's agencies. With great enthusiasm the artists spread out all over the country. They rafted down rivers, slogged through salt marshes, circled over mountains and the results were spectacular.

Among those lured by the open skies and wide expanses, Vincent Arcilesi tied his easel to rocks on the North Rim of the Grand Canyon to withstand savage winds while he worked long hours each day for many weeks. William Allan flew to Alaska where he painted a delicately detailed watercolor portrait of a sockeye salmon as well as a cloudscape over Mount McKinley. Don Nice was lowered by helicopter into the midst of a buffalo heard in South Dakota where 20,000 of the wild creatures live in a protected environment. He made sketches and eventually executed a classic hair-by-hair portrait of a buffalo, long ago adopted as the emblem of the Department of the Interior. Willard Midgette painted a 9 x 26 foot mural of a Navajo "Powwow" complete with beer cans and blue jeaned Indians.

Though this is predominantly a landscape exhibition it is decidedly a view of the land through 20th Century vision. Susan Shatter's Colorado River meanders through endless mesas to form an abstact horizontal design. Wayne Thiebaud's "Yosemite Valley Ridge" undulates with seductive surfaces in glowing purples. Robert Bechtle's "Aqua Caliente Nova" portrays a desert canyon in California's Aqua Caliente Reservation with a Chevy Nova and the artist's wife and kids posing for a tourist shapshot in the foreground. An accomplished scuba diver, Ann McCoy produced a huge but delicate drawing in colored pencil of a living coral reef in Hawaii.

The artists were carefully selected and the show was developed under the leadership of John DeWitt, former Director of the Department of the Interior's Visual Arts Program, and by guest curator John Arthur, Gallery Director at Boston University. Arthur assembled three regional advisors, themselves painters: Wayne Thiebaud on the West Coast, Philip Pearlstein on the East Coast, and Ellen Lanyon in Chicago. The result of their selections is a patchwork of styles, abilities and viewpoints and a redefinition of realism. California artists in the exhibition include William Allan, Robert Bechtle, Vija Celmins, Ann McCoy, Joseph Raffael, and Wayne Thiebaud.

A panel discussion, "The Artist and the Landscape," with exhibition participants William Allan and Philip Pearlstein, will be held on Thursday evening, October 13 at the Museum.

A 12:30 lunchtime lecture series in the Museum Auditorium entitled "Landscape in American Art" will also be held featuring Alfred Frankenstein on October 18, Wanda Corn on October 25, and Robert Bechtle on November 1.

On July 8, 1977, after an intensive screening process, six finalists for the Tony Patino Fellowship were brought together at the Hastings College of Law for Selection Day proceedings. At 10 a.m., the six began arriving at 25-minute intervals for their individual interviews before the Selection Committee, which was comprised of former United States Supreme Court Justice Arthur J. Goldberg, California Supreme Court Justice Raymond Sullivan, Los Angeles Superior Court Judge Arthur Alarcon, Los Angeles attorney Rosemary Gauthier, Elliott Witt and Albert Dorskind of MCA, Inc., Dennis Poulsen of the Friends of the Tony Patino Fellowship organization and the Committee's facilitator, David Abel of the Coro Foundation.

At 1 p.m., the candidates gathered in the Faculty Lounge in three groups of two to prepare for one of the day's most difficult and imaginatively taxing events: each finalist was to act as advocate for his or her partner's candidacy. At 1:30, the groups broke for an informal lunch with the judges, then returned to the Lounge for another half-hour of preparation for advocacy. By 3 p.m., they were gathered together again before the Committee, where they proceeded to tout the outstanding qualities of their fellow candidates.

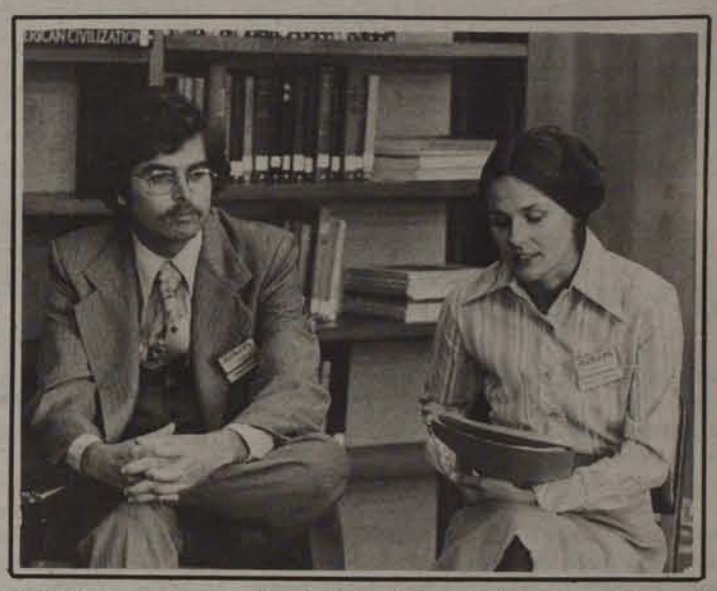
At 4, the long, grueling day was over; the candidates were dismissed and the judges met with Hastings faculty members and Friends of the Tony Patino Fellowship for cocktails and conversation. The decision had been made: Cynthia Remmers and James M. Carroll were chosen as the 1977-78 Fellows Elect.

DECISION-MAKING: THE TONY PATIÑO FELLOWSHIP SELECTION PROCEEDINGS

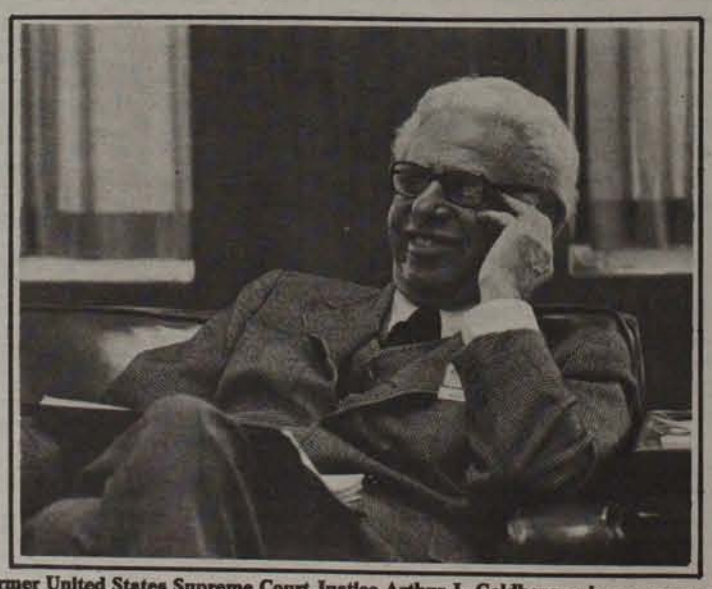
Candidate James M. Carroll is interviewed by Selection Committee members [clockwise from top right] Elliott Witt, MCA, Inc.; former U.S. Supreme Court Justice Arthur J. Goldberg; Dennis Poulsen, Friends of the Tony Patino Fellowship; Los Angeles Superior Court Judge Arthur Alarcon; David Abel, the Coro Foundation; Los Angeles attorney Rosemary Gauthier; California Supreme Court Justice Raymond Sullivan; and Albert Dorskind, MCA, Inc.

Candidates Cynthia Remmers and James M. Carroll prepare to advocate each other's candidacy for the Tony Patino Fellowship.

[Left to right] Candidate Cynthia Remmers, Selection Committee member Albert Dorskind, Candidate James M. Carroll and Selection Day Facilitator David Abel take a lunchtime break from the day-long proceedings.



Cynthia Remmers serves as advocate for her fellow candidate, James M. Carroll.



Former United States Supreme Court Justice Arthur J. Goldberg enjoys a moment of levity during the Selection Day proceedings.

The Tony Patiño Fellowship: Something New, Something Needed

by Joseph H. Golant

The University of California-Hastings College of Law has provided something new in the form of "The Tony Patino Fellowship" for needy and worthy students. The amount provided is $5,000 per year and covers both educational and living expenses. More may be provided by a related endowment fund to compensate a student for childcare expenses. The purpose of the Fellowship is not only to encourage academic excellence, but more importantly to ingrain in the recipient a sensitivity for the needs of society. Thus, an applicant for the Fellowship must have a record showing active participation in public interest activities, such as organizations or programs that study and contribute to the solution of societal problems. It is hoped that the financial support from this new Fellowship will give the recipient the opportunity to continue engaging in public service activities while pursuing his legal studies; it is expected that the result will be a community sensitive, community active lawyer.

A Fellowship Screening Committee has already been formed, including three people from the law school, Dean William Riegger, Dean Jane Peterson and Professor Jerome Hall, as well as a group of people from outside the school headed by former United States Supreme Court Justice Arthur J. Goldberg, California Supreme Court Justice Raymond Sullivan, Los Angeles Superior Court Judge Arthur Alarcon, Mr. Elliott Witt and Mr. Albert Dorskind, executives with MCA, Inc., and Ms. Rosemary Gauthier, a Los Angeles attorney. The Fellowship was established by the formation of a half a million dollar trust by Mrs. Francesca Turner, in memory of her son, Antenor Patino, Jr., who prior to his death was a Hastings student and a gifted writer for Universal Studios, a subsidiary of MCA, Inc.

The ideals expressed by The Tony Patino Fellowship are warmly received and, I think, long overdue. The legal profession has always occupied a special place in our society and in return incurs a special obligation to society. In law school we learned the mechanics of running our society. We were also instructed in the art of legislating, in setting forth the rules and regulations to operate our society and in the rationale which forms its foundation. We are the ones who are supposed to make our system work in a more progressive and civilized manner than perhaps instinct alone will let us.

For years, our profession has foisted this role of itself upon the public and the public has blindly accepted it. However, we know that many in the legal profession are more immoral than moral, and more unethical than ethical and demonstrate only an incidental concern for the public interest. As Part II of this editorial points out, Watergate and its surrounding activities illustrated quite clearly where some ostensibly prominent lawyers were coming from.

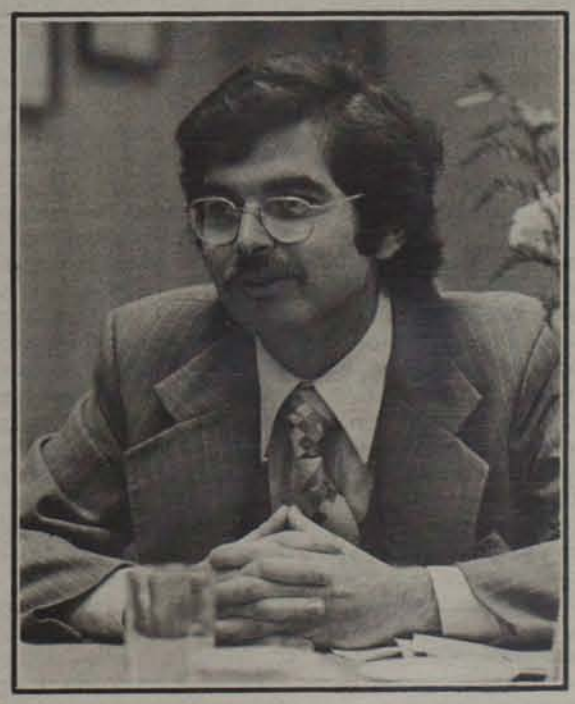
It's about time that society's greater interest be foremost in our minds and that ways be sought to represent our respective clients within such a more rational framework. The Patino Fellowship places on an equal footing the learning of the mechanics of the law and the learning of the reasons why the law is needed and how it is to be applied in everyone's best interest. We all have a public duty to see that society is well served and that it progresses harmoniously.

While one would hope that The Tony Patino Fellowship would have been unnecessary it is clear there is a need. The Fellowship ought to make us all more sensitive to the community's interests and to inject those interests into our practices.

—Reprinted from The Journal of the
Beverly Hills Bar Association
May-June 1977

THE 1977-78 FELLOWS ELECT

CYNTHIA REMMERS, married and the mother of two, is a co-founder and Vice President of a non-profit day care center for developmentally disabled children in Los Angeles, California.



JAMES M. CARROLL is a former cop on the beat in Trenton, New Jersey who developed a new procedures for juvenile drug abuse control.

DISTRICT ELECTIONS COMING OUR WAY

There is a supervisorial election in your future. The defeat of propositions A and B in the special election on August 2nd assures that San Francisco will go back to an electoral system it abandoned in 1933: the district election of supervisors.

This will provide all of you with an unparalled opportunity to become involved in one of the estimated 150 campaigns that will be waged for the November 8th election. You jaded politicos out there who have served on senatorial staffs or on a state central committee may laugh, but this November the rest of us will actually have the chance to participate in an election where the ordinary campaign volunteers will have an opportunity to see and perhaps even speak to the candidate they are campaigning for. So that you have a somewhat better idea of what is going on I will briefly go over the background to district elections in San Francisco.

Since 1933 San Francisco has had an at-large system of electing supervisors. This has meant that theoretically a supervisor was elected by and was responsible to the entire city.

Community and neighborhood groups argued that the $100,000 cost of running for city-wide office every four years meant that the supervisors were in fact responsible not to the people in general but to the downtown business interests that provided the bulk of campaign contributions. This indebtedness shows especially clearly when one considers that the supervisor's job is a part-time position paying only $9,600 a year.

In the past few years, a wide variety of groups have tried on several occasions to reintroduce district election of supervisors. They were successful last November (1976) with proposition T, which established 11 supervisorial districts and required each candidate to live in, be elected by and be responsible for his or her district.

T succeeded where other attempts had failed for a number of reasons. One was the constant increase in property taxes and rents, another the craft workers' strike, a third, the underestimating of the pro-district election forces by those who supported the status quo, and finally, there was the presidential election that occupied most people's attention.

Immediately after the passage of Prop T, a group called San Franciscans for Total Representation began to collect signatures for a special election to nullify Prop. T even before it took effect.

San Franciscans for Total Representation argued that district elections would lead to machine politics and control by special interest brokers and that San Francisco was sufficiently small and cohesive enough to make further subdivision unnecessary. Most of the incumbent supervisors (the majority of whom live in two districts) supported San Franciscans for Total Representation. That initiative qualified and was made Proposition A on a special election ballot canned by voters on August 2nd, 1977.

Proposition A would have repealed Prop. T and returned us to an at-large system. It looked like a fairly sure thing. All the big money in town was supporting yes on A. The media was downplaying the election in the hopes of a minimal turnout, which would benefit A. Mayor Moscone and other city wide officials, while nominally supporting district elections (No on A) were keeping a very low profile.

Into this situation came Supervisor John Barbagelata. Supervisor Barbagelata had been Mayor Moscone's opponent in a bitterly fought mayorial race in November 1976 (at the same time that Prop. T passed) and a subsequent runoff in December 1976. Barbagelata had a strong following of old-line middle class San Franciscans, centered in the western part of the city. Barbagelata began to collect signatures for another initiative which qualified as Proposition B on the August 2nd, 1977 ballot.

Proposition B was a "grab-bag" of different elements. It would have: 1. shortened the term of the Mayor, District Attorney, Chief Administrative Officer and Sheriff, forcing them to run for election again this November; 2. shortened the term of most of the members of the Boards and Commissions, having them reappointed by the winning mayor this November; 3. changed supervisoral elections to a mixed system where each supervisor wold live in and be responsible for a district but be elected "at-large"; 4. added a provision that all elected officials be elected by a majority vote; and 5. added a provision for recall of supervisors. Barbagelata and his group believed that Prop. B was the only was to prevent a radical (liberal) takeover of the city.

There were two opposition groups. San Franciscans for District Elections, headed by a private investigator with the unlikely name of Jack Webb, were opposed to both A and B. They were primarily concerned with the issue of district election of supervisors.

The No on B Committee, run by Don Bradley, the heavy among local Democratic professional campaign managers, was only opposing Prop. B. They had the support of almost all of the city's elected officials and the money of the downtown business establishment.

The financing of the No on B campaign by the downtown business interests was one of the most interesting aspects of the whole campaign. Apparently some New York money managers became concerned with the possibility of having a change of administration in mid-stream and began to talk about lowering the rating on San Francisco bonds and withholding some private investment money until the political situation settled down. This caused a great deal of concern among San Francisco business interests. They decided that in spite of the danger that B would take A down with it they had to defeat B.

The election was fought with downtown money going to Yes on A and No on B, person power from neighborhood, community and labor groups going to No on A and B, and Barbagelata and his followers going for Yes on B. Between the downtown money and person power, A and B were defeated.

There was still a great deal of tension between the winning groups. This was reflected in the post-election festivities. The No on B celebration was held at the traditional Democratic watering hole, the San Franciscan Hotel. At that party Mayor Moscone treated the defeat of Props A and B as a personal victory and a vindication of his actions as mayor. The No and A and B celebration was held at the Queen Adah ballroom in the Western Addition. Not one of the elected officials whose term would have been cut short by Prop. B came to thank the people who had done much of the precinct walking, and they felt somewhat bitter about it. The entertainment at the Queen Adah hall was a street theater group doing a skit against manhattenization, and some very loud disco music.

This, in gross oversimplification, is where we stand at the onset of campaigning for the first district elections for supervisor in 44 years. The campaign should be interesting, chaotic, loud and very democratic (with a small d). I urge all of you to get involved in one of the campaigns.

by Chris Peeples

LETTERS TO THE EDITOR

As I read through the list of course offerings this fall it was with the same anticipation hitherto aroused, no doubt, only by Rome's awaiting the coming of the Visigoths. The courses I had patiently waited two years for were closed, quickly grabbed by hungry students with lower lottery numbers, and more luck, than I. I was caught between the Scylla of 'Corporations with Him' and the Charybdis of having to fill my schedule with 6 or 7 meaningless two-unit horrors. Would I now have to take Medical Jurisprudence, P.I. Lit., and Indian Treaty Law? Surely there is some justice left in the world. After all, "fiat justitia." With this dour prospect I closed my eyes and contemplated what it might be like if Hastings would offer some courses like these:

Accounting for Shysters (4 units) An examination of accounting principles and billing procedures with an emphasis on money and how to spend it. Special reference to bonds, debentures and the problems of opening a checking account. Other topics: usury, welching.

Domestic Relations (4 units) A practical exploration into key areas of marriage dissolution, wife-beating and other marital problems. Fifty ways to leave your lover analyzed in detail. Student participation in practice seminars plus oral report required. Text: Frederick's of Hollywood catalog.

Selected Topics in Talmudic Law (5 units) This year's course will cover the 'Mishna Torah' and where to get a good kosher meal in the Tenderloin. Mandatory field experience and weekly synagogue attendance. Lectures in Yiddish. Required texts: the Hagada, West's Annotated Ten Commandments.

Death and the Warren Court (6 units) A study of procedural due process in the context of death. Is there a right to counsel? Plea-bargaining, pardons, bail and other alternatives to death will be considered. Stiff competition. Visiting Professor Warren.

Professional Responsibility (4 units) The categorical imperative and how to make it work for you in building a successful solo practice. Examination of the Calif. Rules of Professional Conduct, how to dress for the fall, and other topics of current interest.

Jurisprudential Foundations of Drop/Add (½ unit) The drop/add procedure is analyzed against a background of logical positivism. Couse meets in Room 111 Prerequisite: degree in logic or computer science.

Michael DeAngelis

MARKING TIME. . . . LIFE INSIDE . . . .

By Edward Apodaca

Edward Apodaca is an inmate of Folsom Prison. Should SB 42 perform as planned, his 19 years-to-life sentence for burglary and rape will be reduced to a strict nine years. This is his first published article. This article originally appeared in the September 1977 edition of **Student Lawyer,** an ABA Publication, all rights reserved.

Los Angeles Police Chief Edward M. Davis calls it "the great prison break." According to him, the prison gates in California have been opened and thousands of dangerous felons have been prematurely released—thanks to an act of Governor Edmund "Jerry" Brown and the state legislature. This new law, "The Uniform Determinate Sentencing Act of 1976," known to most Californians as Senate Bill 42, took effect on July 1, 1977, after surviving numerous attempts to kill it. The criticism against SB 42 began last year, as soon as Governor Brown signed the bill into law. Police Chief Davis, one of the bill's most ardent critics, was the first to attack the new legislation, using the opportunity to also launch his bid for the coming gubernatorial race as a tough "law and order" candidate.

But to supporters of the new legislation, SB 42 is the beginning of a new era in California's criminal justice system. Basically, it removes the onus of rehabilitation within the penal system and substitutes instead punishment through imprisonment as the state's new method of dealing with crime.

Coincidentally, SB 42 also benefits thousands of prisoners with either shorter sentences or an immediate release from prison. And this, even though the bill imposes punishment above the national average for most crimes.

The controversy surrounding SB 42 concerns more than the release of prisoners. It does nothing less than entirely restructure the California state prison system by abolishing its 60-year-old "indeterminate sentencing" practice and California's Adult Authority panel (parole board).

Supporters of the bill maintain that is is a giant step forward in reaching uniformity and fairness in the state's criminal justice system. They claim the punishment now imposed by the sentencing court will be understood by all and out in the open for the offender and victim and other concerned persons to plainly see. The new law takes a different approach to the application of punishment for a crime. It does not attempt to change, correct or rehabilitate a prisoner. Rather, very simply and mechanically, it imposes a number of years of imprisonment for each specific crime.

Opponents of the new law claim that it is too soft. They see it as a code-word to allow the release of dangerous felons prematurely back into society. And although they are not all adamant backers of the state's previous methods, better to keep prisoners locked away longer than necessary, they think, than to unleash them too soon.

Whether SB 42 is a travesty of justice or a bold and vital step forward, only time and its comparison to the previous indeterminate sentencing law can say. But there are a few objective pluses and minuses about each approach that can be compared. Indeterminate sentencing does allow the parole board a substantial latitude in fixing the final term of imprisonment. A convicted felon was sentenced to "the term prescribed by law" such as 1-15 years, 5-life, etc. This small minimum and large maximum gave the parole board freedom to individually evaluate the prisoner, view his gains toward rehabilitation and tailor his total time of punishment by taking into account all the extraordinary factors that the court may have overlooked during the sentencing phase of the trial. Under these conditions, uniformity could be better achieved by the parole board at a more opportune time.

But on the minus side, the board's very flexibility was its license, too. Members reacted differently to certain crimes based on their individual feelings and attitudes. A black convicted for the rape of a white woman, a Chicano convicted for sale of narcotics, or a Hell's Angel convicted on an assault charge would inevitably serve more time than others committing the same offenses under similar circumstances. Had the parole board itself been composed of a cross-section of California's population, perhaps things might have been different. But it was not. With the exception of some token representation, only men with law-enforcement or prison-administration backgrounds were appointed to the board. Nor was it rare for one's previous captor or jailor to sit in judgment on a convict's future liberty. (One San Quentin prisoner remembers that "a board member at my parole hearing was actually the same DA who had prosecuted me six years ago. I didn't have a chance.")

Still, it was significantly *not* a judgment of right or wrong that led to the passage of SB 42 and California's first determinate sentencing act. Instead, a series of random but heavily political events was its genesis. To trace them back to their very beginning is to go as far back as 1967. Over the previous five years, California's prison population had steadily increased. The rigid policies of the parole board and the increased number of convicted felons sentenced to state prisons contributed greatly to the trend. By 1968, in fact, California had the nation's largest prison population—29,000, even bigger than the federal prison system.

Among the heinous by-products of this situation was forced "double celling": the prison convention of two men sharing the same 5' x 9' cell. At the same time, the complexion of California's prison population changed sharply. Where before whites had made up most of the state's inmates, now blacks comprised 33 percent, and Chicanos a full 20. What's more, the prisoners of the Sixties were better educated, more demanding inmates than those of the decades before. They had grown up either in institutions such as Soledad and San Quentin, or with the revolutionary ethics of "Black- and Brown-Power" on the outside. These various forces of overcrowding, racism and increased sophistication combined in the California prison system to produce a period of violence—or more accurately, a wave that didn't stop at the state's boundaries but spread from the prisons at this end of the country to Attica at the other.

Of course, in California at least, there were other less obvious reasons for violence. First and foremost was the lengthy and disproportionate prison terms being imposed by the state's parole board. On the other side of this was the prisoners' suffering and anxiety from not knowing on a day-to-day or year-to-year basis when parole would be granted.

In the meantime, the state departments experienced a drastic financial crunch at the hands of Ronald Reagan, then California's tight-pursed Republican governor. Keeping his campaign promise not to raise taxes, he slashed budgets by some 15 percent. And the prison system, under the Department of Corrections, was no exception. This left but one alternative—reduce the prisons' population, or face even greater prison unrest.

Obviously, the courts could not do so, so the parole board had to be the avenue. As if by magic, the paroling policies changed virtually overnight. Within two years the prison population dropped from 29,000 to 25,000. How ironic it was that economic considerations, not the threat or reality of violence inflicted on the prisoners, led the state to change its stringent paroling policies. And economic factors continued to affect it. During the three-year period, 1970-72, 25,000 prisoners were paroled.

Also during this period, the Probation Subsidy Program was increased throughout the state. This program reduced the number of convicted felons being sentenced to state prison terms by compensating counties for retaining the convicted felons in their own facilities or placing them on probation, rather than sending them to prison. Each county was compensated in the amount of $5,000 per person per year. The rationale was that it would cost the state $6,500 to keep a person in prison for one year.

The increased paroles had predictable and significant negative side-effects. Many felons were released on a "take a chance" basis; the standards the board employed were inconsistent and self-defeating. Some critics felt, and rightly so, that the parole board itself should have been held accountable and criminally prosecuted for conspiracy and collusion, as its lenient policies were directly responsible for a series of crimes, many violent. (One example was the much-publicized robbery ring that operated out of the Don Lugo Pre-Release Center. Two prisoners involved in the Work Furlough Program left the prison every day under the guise of job-hunting; actually the employment they found was self-made, as they systematically robbed select establishments in the outlying communities.)

To buffer themselves against mounting criticism, California's parole board reverted back again to its hard-line policies of the mid-Sixties. In 1973-74, paroles were reduced and the Parole Subsidy Program eased. The prison population was on the upswing again.

Meanwhile, Californians had just elected a new Governor, Edmund "Jerry" Brown, Jr. Although he was the son of a previous governor and had been raised on a political atmosphere, he still brought a new spirit to California politics. Rather than make vague promises, he preached limited expectations, realistic goals and an openness in state government. He also called for the inclusion and active participation of women and minorities in government, people who in the past had only token representation. Of noteworthy interest to critics of the parole board, Brown also indicated that he was against the "indeterminate sentencing law," which had come under much attack once again over the parole board's "hard-line" policies.

In the early spring of 1975, the legislation materialized and took form in Senate Bill 42. It was introduced by John Nejedly, a highly regarded Republican state senator who had once been a district attorney. SB 42 sailed through the conservative state Senate on a (36-1) do-pass vote.

But the bill's easy journey through the upper body of the legislature did not guarantee its passage. SB 42's passage out of the Senate alarmed the parole board and other agencies which would be affected by the bill's passage. Some judges in particular, who had ignored the bill at first, were now taking it seriously. Lobbyists immediately went to work. SB 42 was stalled for the 1975 session in the Assembly Criminal Justice Committee, the graveyard of penal reform legislation. The bill was not dead though; it had only been tabled. It would have another chance with the committee in 1976.

During the remainder of 1975, the parole board made another effort at stifling the criticism and saving the indeterminate sentencing law. The "Procunier" paroling policies were created and adopted by the newly appointed chairman of the parole board, Raymond Procunier, former Director of Corrections for the past eight years. Controversial himself at times, he was gutsy, outspoken and rebutted criticism well. As Director of Corrections, he had been innovative and ahead of his time with many of the new programs he introduced into the prison system.

Procunier immediately attacked the bottom line issue of criticism surrounding the indeterminate sentencing law—the fact of "not knowing." In

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March of 1975, Procunier's board fixed parole dates for most prisoners. But this abrupt and radical change in paroling policies resulted in yet another mass release of prisoners. Under Procunier's scheme, over 4,000 prisoners were released during the 90-day period of July, August and September of 1975; over 11,000 in all were paroled that year. Thus the previous "take a chance" methodology changed to a "practically everyone" basis. Even Sirhan Sirhan, the convicted assassin of Senator Robert Kennedy, received a parole date for 1986. In 1977 his parole date would be further advanced to 1985.

In the tumult that followed, SB 42 only garnered more supporters, including Brown. Procunier resigned. The bill with its new strength passed out of the Criminal Justice Committee and was sent to the Assembly floor. As a part of the strategy to limit debate on this controversial piece of legislation, SB 42 was delayed until the final day of the session. The bill had to be passed before midnight if it was going to live. And it was, despite an attempt by one conservative assemblyman to filibuster.

Thirty minutes before midnight a radio news flash brought word to the prisoners: "Senate approves amendments, Uniform Determinate Sentencing Act of 1976 is law." All hell broke loose in the prisons. The news was passed from cell to cell and cheering and yelling soon followed. For the imprisoned there was much to be happy about. The new law would benefit most of the men and women serving time in the California prison system.

Nine days later, with much fanfare and media coverage, Brown signed SB 42 into law. Entered on January 1, 1977, but operational six months later on July 1, 1977, SB 42 was hailed as a major reform of California's criminal justice system. For Brown's second year in office, his active support for the passage of this legislation would be considered one of his major accomplishments. Theoretically at least, the blindfold on the lady of justice had been replaced, and the offender, rich or poor, would now receive uniform treatment when the judge imposed sentence.

And then came War Eagle, an case that focused new light on certain sentencing features of the new law. Opponents had maintained from the beginning that the new law was too soft on criminals. In their eyes, the War Eagle case proved them right. War Eagle was an ex-convict who had been paroled under the "Procunier" paroling policies. A few months after his release, he kidnapped a young woman and drove her to the outskirts of the desert. There he raped her several times. When finished, War Eagle viciously beat her into unconsciousness, then shot her four times with a gun. Convinced that she was dead, he left her where she lay and went upon his way.

By miracle or fate, the young woman still clung to life and, after regaining consciousness, managed to crawl to the roadside where she was picked up by a passing motorist. A few hours later, War Eagle was apprehended by the highway patrol; he had run out of gas and was hitchhiking along the highway not far from where he had left his victim, presumably dead. She lived to testify. War Eagle was convicted and sentenced to a minimum of 19 years to life. Or so they thought.

Under the retroactive provisions of SB 42, War Eagle's sentence would have to be recalculated upon implementation of the new law on July 1, 1977. Furthermore, War Eagle would be able to reduce his term of imprisonment by one third for good behavior and program participation. Conceivably, he could be back on the streets in approximately 11 years. When this hit the papers, people were outraged.

Opponents of SB 42 quickly seized the opportunity to highlight the weaknesses in the bill regarding violent offenders. Brown panicked. After two years in office his popularity was slipping. He had prematurely revealed his political aspirations with his unsuccessful challenge against Carter. He had informed the public that he would veto any "death penalty" legislation; yet the people of California had mandated their desire for a death penalty bill by a 3-1 margin during the 1972 election, and recent polls had shown no change in their feelings. To further complicate matters, Brown's chief opponents in the coming gubernatorial race were tough "law and order" candidates—Brown could not afford to be labelled "soft on criminals."

So in December, only two months after signing SB 42 into law, Brown formed a committee to write substantive changes that would toughen the sentencing provisions and prevent any mass exodus of dangerous felons from prison. And Brown was not alone. During the months of January through April 1977, 21 different bills would be introduced to amend or repeal SB 42 before it was given an opportunity to work.

In the prisons, a volatile situation began to brew over the possibility that SB 42 would be sabotaged or sacrificed to increase Brown's chances for re-election. Most of the prisoners had already received "tentative release" dates computed under the provisions of SB 42, and these proposed amendments to toughen the legislation would add extra years of imprisonment for many.

To combat this threat, prisoners aware of the grave consequences began to retaliate. Letters were written to many legislators informing them of the negative "internal response" in the prisons to any tampering with SB 42. Underground preparations were put into effect for a complete work stoppage and prison lock down throughout the 12 California prisons. These plans were received with mixed reactions, but the reality and seriousness of the situation forced many into total commitment. Prisoners began purchasing extra commissary items (cigarettes, coffee, canned foods, etc.) to ease any discomforts that would result from a prison lock down.

But not everyone had turned against the legislation. Senator Nejedly, the original author of the bill, fought to the end to uphold the integrity behind the compromise legislation that SB 42 represented. Also, the ACLU, Prisoner's Union, State Public Defender's Office, Public Advocates, Committee for Prisoner Humanity and Justice, and the Friends Committee on Legislation actively lent their support to oppose any premature changes to SB 42. There was also Assemblyman Richard Alatorre, a key liberal in the Criminal Justice Committee, whose efforts contributed to the final watered-down version of the governor's backed bill. The harsher and more severe amendments were removed and the bill was written more in line with the original SB 42. Although unknown to many, this avoided a catastrophe within the prisons.

In early June, just weeks before the operational date of SB 42, the revised amendments were passed and signed into law. Some of the retroactive provisions were tightened up, but the bill retained most of its initial integrity. Now Brown had the necessary cushion to temper any criticism which may have been leveled against him for actively supporting the determinate sentencing bill.

To be sure, there are many questions which remain, not only about the effect of SB 42, but about the effectiveness of imprisonment in general. But for the moment, Californians are on stand-by in hopes that their new approach to crime will not backfire and produce a rapid escalation in serious offenses. And at the same time, prisoners have a new confidence and respect in the state's criminal justice system that it will, in fact, bring justice to the rich and poor alike. Whatever the outcome, at least the state of California is rid of a 60-year-old system that has failed badly. One hopes this new approach will produce the success originally anticipated when it was passed and signed into law last year.

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The first priority of the Founding Fathers was "to establish justice." Past and present, the press, too, needs a fair trial. If the press considers this background they can write their own high standards without interference from the Bar. If it is true to the principles of the Founding Fathers, the needless and fractured ideology present here can be avoided.

Nonetheless, if judges cannot be editors, then editors cannot be judges. The trial judge is constitutionally charged with insuring a fair trial. Intense publicity places a higher burden on the accused, so equal protection demands that the judge exercise full discretion to force the prosecutor to prove his case in the courtroom just as the non-publicized case.

The trial judge in these cases can be very much alone in the pressure chamber of emotionally inflamed trials. It is the duty of the organized Bar to offer full support, particularly in the many jurisdictions where judges are elected and the press influence is wide.

The recommendations being offered in 1977, are troublesome indeed. They tend to place a greater burden on the accused and seem to place too much hope on sequestration, a remedy that is repulsive and may result in a jury selection that is constitutionally impermissible.

Most criminal defense lawyers believe that trial postponement, while sometimes helpful, often changes the scene, not the substantive problems, though the coverage is usually toned down. The inevitable result of *Neb. Press Assn.* is to force states like Nebraska, which do not ulitilize Grand Juries, to hold preliminary hearings in camera. That may be bad but not for the reason generally ascribed. Closed hearings generate suspicion and eventually a loss of public confidence. There are alternatives, but I want to stress two items that have received little attention.

We might focus on the time when jurors are most vulnerable to outside influence; from the time they receive their initial summons for duty to the time they first meet the jury judge, a juror's curiosity is high. As they report to the courthouse, they are nervous and uncertain in an environment usually strange and sometimes intimidating. The air is rife with rumor and speculation. In the smaller cities, the venireman can be quite certain he is being called for the "big trial"

We can render a valuable service by concentrating on the clear and emphatic instructions that will poignantly drive home to the potential juror his duties and obligations, and how they differ from those of the media. Once this is impressed upon the venireman, we can rest easy about pretrial publicity; the jurors will read the media's stories with perspective.

But that can't be the end. Chief Justice Burger spoke of the necessity of a "searching voire dire" (427 U.S. at 548). Veteran trial lawyers and judges agree this is the best method of ferreting out both conscious and unconscious bias. It is the duty of the counsel to probe for this prejudice so it at least can be minimized if not eliminated. The cases and jurisdiction that attempt to restrict or prohibit counsel from this task are denying the client the right to consel in a most critical area. For it is counsel, not the judge, who have been living with the case for weeks and months on end. Only counsel know the intricacies of the case and what could or might improperly affect the jury verdict. But if leading questions are to be prohibited, as intimated in *Murphy v. Florida*, (421 U.S. 794), then the voire dire cannot conceivably be searching.

This is not to foreclose the trial judge's function in questioning the array. He can be not only helpful but more effective in some of the sensitive areas. No voire dire will ever be ideal. But the better ones display a solid working arrangement between trial counsel and the presiding judge. Two that will serve as fine examples are the voire dires in *People v. Speck* and *U.S. v. Ahmad*. Both involved intense, prolonged, and often inflammatory, publicity: *Speck*, which was the murder of eight nurses in Chicago, with the venue changed to Peoria (probably a mistake); *Ahmad* is better known as the trial of Father Berrigan, or as the media referred to it "the Kissing Kidnap Case".

A searching voir dire necessarily takes time, weeks on end as a rule. It is a small price to pay for a Constitutional guarantee. Personally, I believe the voir dire can often be an illuminating and educational experience, and I would like to see the media present for all of it. But there are inevitable problems of prejudice feeding on itself through the media and the solution must be a voir dire in chambers; otherwise an impartial jury will be thing of the past.

The heavy burden of proof placed upon the government in criminal actions is perhaps our most unsung, yet most valuable protection. We will chip away at it at our peril.

by George F. Archer

BATES IMPACT

"For every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straight forward."
Justice Blackmun

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Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, the Court declared that the First Amendment was violated by a state statute that prohibited pharmacists from advertising the prices of prescription drugs.

The decision is really an extension of *Virginia Pharmacy* to the legal profession and, according to Justice Blackmun, "might be said to flow a *fortiori* from it."

The decision does not apply, Justice Blackmun went on, to lawyers' advertising that makes claims about the quality of legal services or to "in-person" solicitation of clients by lawyers or their agents. Justice Blackmun also warned that the "special problems of advertising on the electronic broadcast media will warrant special consideration."

The case began when two young Arizona lawyers, John R. Bates and Van O'Steen, opened a law office in Phoenix called the "Legal Clinic of Bates and O'Steen" and inserted an advertisement in the *Arizona Republic.* They conceded that the advertisement violated Disciplinary Rule 2-101(b) of the Code of Professional Responsibility which had been adopted as Rule 29(a) by the Supreme Court of Arizona: "A lawyer shall not publicize himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in the city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf."

The United States Supreme Court reversed on the First Amendment issue, but agreed that the Arizona Supreme Court's adoption of the advertising rule was state action against which the Sherman Act was not meant to apply.

Justice Blackmun, who wrote the opinions for the Court in both *Virginia Pharmacy* and *Bigelow,* had little trouble with the antitrust question, citing the state action exemption announced in *Parker v. Brown,* 317 U.S. 341 (1943), which involved a suit against California state officials challenging a state program intend-

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ANTITRUST PROBLEMS LINGER DESPITE *BATES*

Antitrust problems proved to be a phantom for the State Bar of Arizona in the recent lawyer-advertising decision, but that may not be the case for all bars whose regulatory or disciplinary activities are challenged.

In **Bates v. State Bar of Arizona,** John R. Bates and Van O'Steen claimed that they were entitled to advertise their legal clinic because the anti-ad rule they violated was afoul of both the First Amendment and the Sherman Act. They were only partly right. The U.S. Supreme Court upheld their First Amendment claim 5-4 but unanimously denied any antitrust violation.

The high court said that the restraint imposed by the Supreme Court of Arizona, an arm of the state, was "state action" and exempt from antitrust liability under the 1943 **Parker v. Brown** decision.

This line of reasoning happened to be that endorsed by the Department of Justice in its **amicus** brief in **Bates,** even though Justice has for several years been involved in a program of antitrust enforcement directed at what it sees as restraints of trade in the commercial aspects of various professions.

One result of that effort is the suit against the American Bar Association, filed by the department in June, 1976. This complaint charges that the A.B.A., in recommending its model Code of Professional Responsiblity rules restricting lawyer publicity, engaged in a conspiracy to restrain competition among lawyers. The complaint is not mooted by **Bates,** since its focus is on an alleged private agreement, not state regulation.

But the form of state regulation, or its absence, could spawn antitrust difficulties for bar associations. Justice, in its brief, insisted that the Arizona rule **did** violate the "substantive standards" of the antitrust laws and could not be challenged on Sherman Act grounds only because it was promulgated by the court.

Courts are proving willing to agree that, without existing "state action," bars are out on a limb when they take actions that are found to be anticompetitive.

One such instance was the Supreme Court ruling in **Goldfarb v. Virginia State Bar** two years ago, in which minimum-fee schedules were struck down as price fixing. There was no question of a "state action" exemption, for the Supreme Court of Virginia had never endorsed the drafting of minimum-fee schedules.

But, even where "state action" seems to be involved, there may be problems with procedures. In April a U.S. District Court ruled in **Surety Title Insurance Agency, Inc. v. Virginia Bar** that the issuance of opinions by the bar defining the unauthorized practice of law was unlawful and that, in the case at hand, a U.P.L. opinion defining real-estate title searches as the practice of law violated the Sherman Act.

Although the opinions were born of a Supreme Court of Virginia command to the bar, they took effect without consideration or approval of the court, a procedure ruled faulty in **Surety.** The decision is being appealed.

But in a few states, rules regulating lawyer conduct may not be the result of a direct court order, as in Arizona, but of bar action. As not only the substance of regulation but, increasingly, the procedures are subjected to antitrust scrutiny, such practices may have to change.

Joe Sims, deputy assistant attorney general in the Antitrust Division, has indicated other areas in which Justice is interested, such as agreements between professions, defining the domain of each, and the possible manipulation of bar exams or imposition of limitations on long-standing reciprocity agreements with other jurisdictions to keep lawyer numbers down when the profession in a state is felt to be overcrowded.

BATES

CALIFORNIA RESPONDS

The State Bar has decided to ask the California Supreme Court to consider and immediately adopt interim Rules of Professional Conduct which would ease restrictions on attorney advertising.

These interim rules were approved by a majority of the Bar's Board of Governors during its meeting here Friday and would remain in effect until further changes can be drafted and submitted to the court.

The Board acted at the urging of member Kurt Melchior of San Francisco, who is chairperson of the Board Committee on Professional Responsibility.

The proposed interim rules put the accent on truth, saying advertising is permitted only when:

Both the information itself and the manner in which the information is presented or distributed . . ." are not false, fraudulent, misleading, deceptive or unfair" and "are not likely to mislead or deceive, whether because in context they make only a partial disclosure of variables and relevant facts, or for other reasons. . ."

Prohibitions against direct solicitation would be continued and claims of specialized practice or specialities would be limited to members of the Bay who are certified by the California Board of Legal Specialization.

Attorneys who do advertise would be required to keep available for one year a true copy of what was published.

The interim proposals are the first of a series which Melchior indicated the committee intends to recommend about the manner and means of attorney advertising which would be authorized. The changes were precipitated by an opinion on advertising issued in June by the United States Supreme Court in an Arizona case.

Melchior stressed that "the proposed revisions are not the State Bar's final word on advertising. [The Committee] intends to go on and be much more specific, but right now we need something which can be used to curb individuals from grossly abusing the advertising medium so as to mislead the public."

The Board discussion highlighted the fact that California attorneys are confronted with an ambiguous situation in which, on the one hand, existing rules prohibit attorney advertising and, on the other hand, the U.S. Supreme Court decision in *Bates v. State Bar of Arizona* permits advertising under undefined limitations. Melchior said the revisions are intended to fill that vacuum.

An earlier revision of the Rules of Professional Conduct, similar in large degree to the U.S. Supreme Court's *Bates* holding, was submitted to the California Supreme Court in August of last year. The Court didn't act on them, pending the *Bates* decision.

The interim rules are intended to serve as a stopgap until the rules proposed in August of 1976 can be brought into conformity with *Bates.*

Several Board members objected to approval of the temporary rules. Fulton Haight (Los Angeles) said there was not a sufficient crisis to justify "rushing into temporary rules which only restrict personal solicitation and false and misleading advertising. Putting the genie back into the bottle will be an almost impossible task." Haight said that instead the Board Committee on Professional Responsibility should develop complete revisions covering all aspects of attorney advertising at all possible speed.

Analysis

ADVERTISING

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ed to restrict competition among growers in order to maintain prices in the raisin market. The Court held then that the state, "as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit."

Justice Blackmun conceded that *Parker v. Brown* had been held not applicable in two recent cases that are similar—*Goldfarb v. Virginia State Bar* and *Cantor v. Detroit Edison Company*, 428 U.S. 579 (1976), but he distinguished them. In *Goldfarb*, he pointed out, the county bar minimum fee schedule and the state bar's opinions on professional ethics were not the product of the Supreme Court of Virginia, and so they were not state action. In *Cantor*, he continued, the claim of antitrust was asserted against a private party, not the state, and that, while the tariff under which the electric utility distributed light bulbs to its customers at no additional cost had been approved by a state agency, the distribution itself was not essential to the state's utility regulation efforts. He also pointed out that the state agency only acquiesced in the anticompetitive program, and did not order it.

Justice Blackmun said that "false, deceptive, or misleading" advertising may be regulated, and added that commercial speech does not have the leeway for untruthful or misleading expression that is allowed for noncommercial speech. He also mentioned that advertising claims about the quality of legal services—"a matter we do not address today"—are not measurable and verifiable and are "so likely to be misleading as to warrant restriction." "Similar objections," he continued, "might justify restraints on in-person solicitation."

The majority recognized, Justice Blackmun wrote in conclusion, "that many of the problems in defining the boundary between deceptive and nondeceptive advertising remain to be resolved, and we expect that the bar will have a special role to play in assuring that advertising by attorneys flows both freely and cleanly."

Justice Powell pointed out in his dissent that the prices advertised in *Virginia Pharmacy* were for standardized, prepackaged drugs, and he disagreed with the majority that "routine" legal services are "essentially no different for purposes of First Amendment analysis from prepackaged prescription drugs."

Legal services, he declared, "are individualized with respect to content and quality and because the lay consumer of legal services usually does not know in advance the precise nature and scope of the services he requires."

Chief Justice Burger's dissent took the position that the Court was assuming that lawyers will not advertise "anything but 'routine' services—which the Court totally fails to identify or define—or, if they do advertise, that the bar and the courts will be able to protect the public from those few practitioners who abuse their trust."

Alumni/Development

DEFINING DEVELOPMENT

A Few Words From
Associate Dean of Development
Wally McGuire

The Development Office is a relatively new operation at Hastings College. As such, it seems appropriate to describe the purpose and function of the office in this, the first **Law News** edition of the academic year.

While the Development Office encompasses many functions within its normal role — public relations, alumni affairs, special events — its primary function is to raise funds for the College.

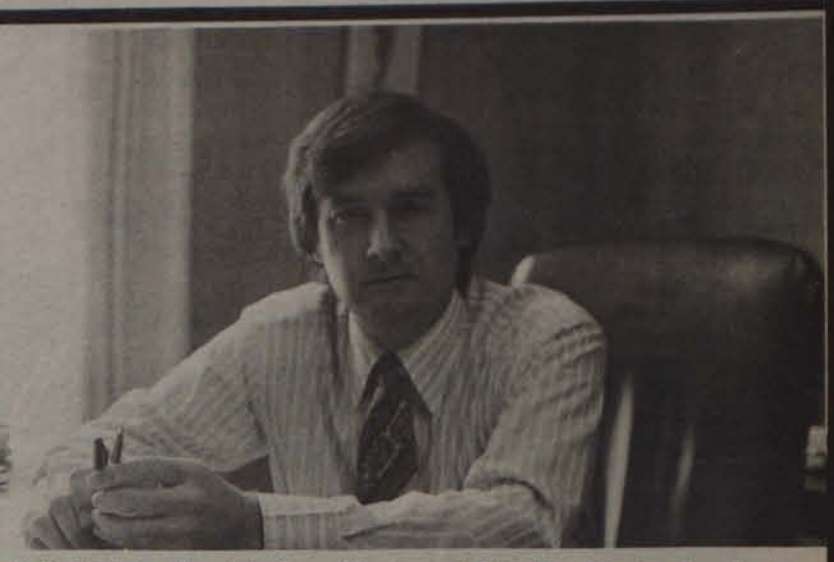
For a state supported institution such as Hastings, this appears on the surface to be a secondary, or even unnecessary concern of the school. As an affiliate of the University of California, Hastings only receives financial assistance, not total support, from the state. In higher education today, it has become obvious that private funds spell the crucial difference between "good" and "excellent."

At Berkeley, for example, over 50 percent of the operating budget comes from gifts, endowment income, grants, contracts, and auxiliary enterprises — all sources outside state support. Last year, Hastings received approximately $900,000 of private funding, or about 15% of its operating budget. Needless to say, this is a minimal sum for a major law school.

Endowed chairs, superior facilities and programs are special inducements to attract and retain a quality faculty. Scholarships, as well as the "little things" which generally enhance the quality of academic life at the College — extras beyond the bounds of state support — all require private funding. And in the case of Hastings there is the additional and massive task of building a $28 million Law Center, half of which must be privately funded.

In the past, Hastings has always done the job with what state funds it had. The College had no endowments except its original one in 1878. Never in its hundred year history has it initiated a formal annual funding campaign. Hastings is essentially in the stone age of fundraising. If Hastings is to improve and enhance the quality legal education it provides, we must actively solicit major gifts from private sources. The ultimate success of such an effort will depend on large part upon the pride and dedication of its students, faculty, and administration.

There are many sources of private support we will approach — foundations, law firms and corporations, alumni, the faculty and other individuals associated with the school (parents), and even persons with no direct connection with Hastings but who are concerned with the future of higher educaiton, the legal profession, or San Francisco.



Wally McGuire, Associate Dean, Development Executive Director, Law Center Foundation.

Our approach will vary accordingly. But whether we direct our appeal to an alumni's pride of Hastings, or to the public's concern for a reliable source of well-trained, conscientious attorneys, strong and visible support from those now at Hastings — faculty and especially students — is our best message. In the coming year, as our campaign progresses, the Development Office will call for your help — I look forward to your moral and tangible support.

In its first 100 years, Hastings has survived and even propsered on state support; what few private gifts it received were, in a sense, something extra. Hastings has reached the point in its development where private funds are imperative to assure its continuing excellence in legal education. Now, private funds are gifts of necessity.

STATE BAR ACTIVITIES PLANNED

Announcements have been mailed with the details of the Hastings' State Bar Activities, but in case you have not received one or if you have forgotten to send in your reservation, here are the details again.

Hastings Headquarters Hospitality Suite	**Sheraton Harbor Island Hotel**
	Sunday, Sept. 25, 4:00-6:00 p.m.
	Monday, Sept. 26 8:00-10:00 a.m.
	4:00-6:00 p.m.
	Tuesday, Sept. 27 8:00-10:00 a.m.
	2:00-7:00 p.m.
	Monday, Sept. 26, 7:30 p.m.
	Tuesday, Sept. 27, 11:30-2:00 p.m.
1066 Dinner [Open To All]	Monday, Sept. 26, 7:30 p.m.
Alumni Luncheon	Tuesday, Sept. 27, 11:30-2:00 p.m.

Details of the 1066 function will be sent to all members and San Diego area alumni. All other alumni and friends of Hastings are cordially invited to attend; check the box on the luncheon coupon and an invitation will be sent to you.

CLASS OF 1957 REUNION

In addition to the traditional alumni activities held in conjunction with the California State Bar Convention, the Class of 1957 has scheduled its 20th Year Reunion during Convention Week in San Diego. Horace Coil and Ed Wright are heading a committee which has planned cocktails and dinner at the Reuben E. Lee Restaurant. If you have not yet made your reservation, contact the Alumni Office at (415) 557-3571 soon so you do not miss this opportunity to get together and compare notes with your classmates.

Hastings College of the Law Annual Alumni Luncheon
Sheraton Harbor Island Hotel, Cuyamaca Room, San Diego
Tuesday, September 27, 1977 11:30 a.m.

Enclosed is my check in the amount of $_____ for _____ luncheons [$8.25 per person].

Name _____ Class _____

Address _____

_____ Zip _____

☐ Please send me an invitation to the 1066 Dinner
Make checks payable to: Hastings Alumni Association
305 Golden Gate Ave., Rom 231
San Francisco, CA 94102
(415) 557-3571

LAW CENTER NEWS

[Editor's Note: This column will appear on a regular basis to keep all those in the Hastings Community informed of progress on the Law Center project]

PROJECT DESCRIPTION

In concept, the Hastings Law Center as currently proposed will be a multifaceted urban facility providing exceptional educational opportunities for Hastings students. It would also make available legal services and programs which respond to the needs of the general public, developing in the process an unparalleled resource center for the legal community.

Most significant, and of immediate concern, the new facilities will alleviate the critical problem of crowding at the College. The College's existing physical structure lacks sufficient space for the number of people and programs it must accommodate.

Development of this major project presents Hastings with the opportunity to be more than a great law **school** — but in addition a great law **center.**

The architectural firm of Skidmore, Owings and Merrill will design the facility to be located in portions of the block adjacent to the present facility.

The Law Center project is staged: Stage I to consist of an Academic Facility and Stage II, the construction of a Community Legal Affairs Facility. 50-70% of the Academic Facility will be devoted to a new library large enough to hold 300,000 volumes and with study space to accommodate 65% of Hastings' students. The remainder will be utilized for faculty offices, and student services such as job placement, financial aid, and housing. The existing building will be retained and used for classrooms and instructional support.

Specific programs and design for Stage II of the project, the Community Legal Affairs Facility, have yet to be developed. It is hoped that this facility will house academic and community law-related programs and activities to enrich not only the students' educational experience, but assist the broader public and private sectors.

Task forces composed of Hastings College faculty, students and alumni and San Francisco community representatives will suggest what programs and services will ultimately be housed in the Legal Affairs Facility. A representative sampling of suggestions to date include a full-service community legal assistance program, a child care center, a Tax Institute, legal research and student clinical programs, an advanced legal degree program. This list is neither definitive or exhaustive, but it does suggest the Center's community orientation and practical emphasis.

By consolidating Hastings' legal resources (library, faculty and students) with specialized community service programs, greater effectiveness in the delivery of legal services may be achieved. In addition, through this Legal Affairs Facility, students would be provided excellent preprofessional work experience. The Legal Affairs Facility thus represents Hastings' unique opportunity to simultaneously fulfill commitments to quality legal education and to increased community service.

The College has launched a $15 million fund drive to secure financial support for the project. The State of California has indicated its support for most of the funding needed for the Academic Facility; construction of the Legal Affairs Facility depends on private funds. The majority of the financing for the Law Center must be sought in voluntary gifts from alumni, parents, faculty, business and civic leaders, foundations and corporations.

Construction of the Academic Facility could begin the first of the year. The Community Legal Affairs Facility won't be built for at least another two years.